S. HRG. 100-863

FEDERAL CAVE RESOURCES PROTECTION ACT AND RESTRICTION OF DAMS IN PARKS AND MONUMENTS

HEARING

BEFORE THE

SUBCOMMITTEE ON
PUBLIC LANDS, NATIONAL PARKS AND FORESTS

OF THE

COMMITTEE ON
ENERGY AND NATURAL RESOURCES
UNITED STATES SENATE

ONE HUNDREDTH CONGRESS

SECOND SESSION

ON

S. 927/H.R. 1975

TO PROTECT CAVES RESOURCES ON FEDERAL LANDS, AND FOR OTHER PURPOSES

H.R. 1173

TO PROVIDE FOR CERTAIN RESTRICTIONS ON THE USE OF LANDS WITHIN BOUNDARIES OF NATIONAL PARKS AND MONUMENTS

JUNE 16, 1988

Printed for the use of the
Committee on Energy and Natural Resources

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FEDERAL CAVE RESOURCES PROTECTION ACT AND RESTRICTION OF DAMS IN PARKS AND MONUMENTS

THURSDAY, JUNE 16, 1988

U.S. SENATE,
SUBCOMMITTEE ON PUBLIC LANDS,
NATIONAL PARKS AND FORESTS,
COMMITTEE ON ENERGY AND NATURAL RESOURCES,
Washington, DC.

The subcommittee met, pursuant to notice, at 9:30 a.m., in room SD–366, Dirksen Senate Office Building, Hon. Wyche Fowler, Jr., presiding.

OPENING STATEMENT OF HON. WYCHE FOWLER, JR., U.S. SENATOR FROM GEORGIA

Senator FOWLER. Good morning, everybody. I'm Wyche Fowler from Georgia substituting for our chairman and presiding over these hearings.

The purpose of our being here today is to receive testimony on three measures currently pending before the Subcommittee on Public Lands and National Parks and Forests. The three measures are H.R. 1173, a bill to provide for certain restrictions on the use of lands within boundaries of national parks and monuments; and S. 927 and H.R. 1975, bills to protect caves resources on Federal lands.

I would like to take just a moment to offer my views on H.R. 1173. A number of water resource projects exist within units of the National Park Service system. There are 108 dams in 18 of the 49 national parks, most of which were built several years ago. Over the years, the Park Service has come under considerable pressure by those who want to expand existing water projects and by those who want to build new dams and impoundments either within the boundaries of the national parks or directly outside the parks.

Only recently the Federal Energy Regulatory Commission issued a preliminary permit for a project on the Merced River right outside the boundary of Yosemite. Congressional designation of the Merced River as a component of the wild and scenic rivers system ended that particular recommendation.

The Department of the Interior has asserted that the parks are protected from development of new water projects by existing statutes. Yet a study by the Congressional Research Service questions the adequacy of existing law to prohibit new dams in units of the national park system.

Recent reports from the National Parks and Conservation Association, the Wilderness Society and GAO all agree that the natural resources within our national parks are severely threatened from a variety of forces both inside and outside of park boundaries. Since the existing law seems to be ambiguous, I do feel that we should clarify that it is the intent of Congress that our national parks and monuments not be further threatened by additional dams and impoundments.

At this point, we will place a copy of each bill in the hearing record.

[The texts of H.R. 1173, S. 927 and H.R. 1975 follow:]

II

100TH CONGRESS
1ST SESSION

H. R. 1173

IN THE SENATE OF THE UNITED STATES

JUNE 30 (legislative day, JUNE 23), 1987

Received; read twice and referred to the Committee on Energy and Natural Resources

AN ACT

To provide for certain restrictions on the use of lands within boundaries of national parks and monuments.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. RESTRICTION OF DAMS IN PARKS AND MONUMENTS.

(a) No individual, corporation, partnership, Federal or State agency, political subdivision or any other legal entity may commence construction of—

(1) any new dam or other new impoundment within the external boundaries of a national park or monument, except that any such project may be developed by the National Park Service if deemed necessary to meet the requirements for which the park or monument was established and if the project would not degrade the resources within such park or monument; or

(2) any new dam or other new impoundment which will, after the date of enactment of this Act, inundate land within the external boundaries of a national park or monument.

For purposes of this section: (A) the term "new dam or other new impoundment" means any facility for impoundment or obstruction of water, the construction of which commences after the enactment of this Act; and (B) the term "inundate" shall mean the formation of a body of water upstream from a dam or impoundment caused by construction or operation of the dam or impoundment which permanently or intermittently covers lands within the boundary of any national park or national monument.

(b) The prohibition contained in this section shall be in addition to, and not in lieu of, any other prohibition or restriction on activities within the boundaries of national parks and monuments.

SEC. 2. YOSEMITE NATIONAL PARK.

Notwithstanding any other provision of law, no Federal lands may be used for the expansion of the capacity of any reservoir which is located within the boundaries of Yosemite National Park, unless Congress enacts specific statutory authorization after the date of the enactment of this Act for such expansion.

Passed the House of Representatives June 29, 1987.

Attest: DONNALD K. ANDERSON,

Clerk.

II

100TH CONGRESS
1ST SESSION

S. 927

To protect caves resources on Federal lands, and for other purposes.

IN THE SENATE OF THE UNITED STATES

APRIL 7 (legislative day, MARCH 30), 1987

Mr. DASCHLE introduced the following bill; which was read twice and referred to the Committee on Energy and Natural Resources

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A BILL

To protect caves resources on Federal lands, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the "Federal Cave Resources Protection Act of 1987".

SEC. 2. FINDINGS AND PURPOSES.

(a) FINDINGS.—The Congress finds and declares that—

(1) cave resources on Federal lands are an invaluable and irreplaceable part of the Nation's natural heritage; and

(2) these resources are threatened due to improper use, increased recreational demand, urban spread, and a lack of specific statutory protection.

(b) PURPOSES.—The purposes of this Act are—

(1) to secure, protect, and preserve cave resources on Federal lands for the perpetual use, enjoyment, and benefit of all people, and

(2) to foster increased cooperation and exchange of information between governmental authorities and those who utilize cave resources located on Federal lands for scientific, educational, or recreational purposes.

SEC. 3. DEFINITIONS.

For purposes of this Act the following definitions apply:

(1) FEDERAL CAVE RESOURCE.—The term "Federal cave resource" means a cave located on Federal lands, together with associated topographic and hydrological features.

(2) CAVE.—The term "cave" means any naturally occurring void, cavity, recess, or system of interconnected passages which occurs beneath the surface of the earth or within a cliff or ledge (including any natural resource therein, and natural subsurface water and drainage systems, but not including any vug, mine, tunnel, aqueduct, or other man-made excavation) and

which is large enough to permit an individual to enter, whether or not the entrance is naturally formed or man-made. Such term shall include any natural pit, sinkhole, or other feature which is an extension of the entrance.

(3) FEDERAL LANDS.—The term "Federal lands" means lands which are—

(A) owned by the United States (including surface, subsurface, water, minerals, and interests therein), and

(B) administered by the Secretary of Agriculture or the Secretary of the Interior,

other than Indian lands which are either held in trust by the United States for the benefit of an Indian tribe or subject to a restriction against alienation imposed by the United States.

(4) INDIAN TRIBE.—The term "Indian tribe" means any Indian tribe, band, nation, or other organized group or community of Indians, including any Alaska Native village or regional or village corporation as defined in, or established pursuant to, the Alaska Native Claims Settlement Act (43 U.S.C. 1601 et seq.).

(5) NATURAL RESOURCE.—The term "natural resource" includes any material occurring naturally in

caves, such as animal life, plant life, paleontological deposits, sediments, minerals, speleogens, speleothems, and water.

(6) SECRETARY.—The term "Secretary" means the Secretary of Agriculture or the Secretary of the Interior, as appropriate.

(7) SPELEOTHEM.—The term "speleothem" means any natural mineral formation or deposit occurring in a cave, including any stalactite, stalagmite, helictite, gypsum flower, soda straw, lavacicle, anthodite, flowstone, tufa dam, clay or mud formation, concretion, drapery, and rimstone dam.

(8) SPELEOGEN.—The term "speleogen" means the walls, ceiling, and floor of any cave and associated relief features which are part of the surrounding bedrock, including anastomoses, scallops, meander niches, and bedrock pendants in solution caves and lava bubbles, flow grooves, encased tubes, tide marks, and extrusion spires in volcanic caves.

SEC. 4. SPECIAL MANAGEMENT ACTIONS.

(a) IN GENERAL.—The Secretary shall take such actions as may be necessary to further the purposes of this Act. Those actions may include (but are not limited to)—

(1) regulation and restriction of use of Federal cave resources;

(2) entering into volunteer management agreements with persons of the scientific and recreational caving community; and

(3) appointment of advisory committees.

(b) PLANNING AND PUBLIC PARTICIPATION.—The Secretary shall—

(1) ensure that Federal cave resources are considered in land management planning; and

(2) foster communication, cooperation, and exchange of information between land managers, those who utilize cave resources, and the public.

(c) DISTURBANCE OF FEDERAL CAVE RESOURCES FOR MANAGEMENT PURPOSES.—The Secretary may disturb Federal cave resources where the Secretary finds that such a disturbance is necessary for the management or interpretation of a Federal cave resource.

SEC. 5. CONFIDENTIALITY OF INFORMATION CONCERNING NATURE AND LOCATION OF FEDERAL CAVE RESOURCES.

(a) IN GENERAL.—Information concerning the nature or location of any Federal cave resource may not be made available to the public under section 552 of title 5, United States Code, unless the Secretary determines that disclosure of such information would further the purposes of this Act

and would not create a substantial risk of harm, theft, or destruction of such resources.

(b) EXCEPTIONS.—(1) Notwithstanding subsection (a), upon the written request of the Governor of the State in which a cave resource is located, which includes in such request—

(A) the specific site or area for which information is sought,

(B) the purpose for which such information is sought, and

(C) a commitment by the Governor to adequately protect the confidentiality of such information to ensure the protection of the cave resource from destruction by vandalism and unauthorized use,

the Secretary shall provide to the Governor information concerning the nature and location of Federal cave resources located within such site or area.

(2) Notwithstanding subsection (a), upon the written request of any bona fide research institution, which includes in such request—

(A) the specific site or area for which information is sought,

(B) the purpose for which such information is sought,

(C) a commitment by such institution to adequately protect the confidentiality of such information to ensure the protection of the cave resource from vandalism and unauthorized use,

the Secretary may, after considering the purpose for which such information is sought and the value of the proposed use and activities in terms of enhancing our understanding of the cave resource, furnish the requesting institution with information concerning the nature and location of caves and natural resources located in caves upon lands located within such site or area.

SEC. 6. COLLECTION AND REMOVAL FROM FEDERAL CAVES.

(a) PERMIT.—(1) Any person may apply to the Secretary for a permit to collect or remove any natural resource from caves located on Federal lands and to carry out activities associated with such collection or removal. The application shall contain such information as the Secretary deems necessary, including information concerning the time, scope, location, specific purpose of the proposed collection or removal and associated activity, and the manner in which such collection or removal and associated activity is to be performed.

(2) Unless the Secretary determines that such collection or removal and associated activity will not pose a substantial risk of harm to the cave resource, the Secretary shall require

the permittee to post a bond or cash deposit in an amount sufficient to—

(A) ensure compliance with this Act and regulations issued pursuant to this Act; and

(B) offset any potential damage sustained by the cave resource as a result of the actions of the permittee.

(3) The Secretary may approve a permit under this subsection if the Secretary determines that the proposed collection or removal activities are consistent with the purposes of this Act.

(b) REVOCATION OF PERMIT.—Any permit issued under this section shall be revoked by the Secretary upon a determination by the Secretary that the permittee has violated any provision of subsection (a) or (b) of section 7, or has failed to comply with any other condition upon which the permit was issued. Any such permit shall be revoked by the Secretary upon assessment of a civil penalty under section 8 against the permittee or upon the permittee's conviction under section 7.

(c) TRANSFERABILITY OF PERMITS.—Permits issued under this Act are not transferable.

(d) FEDERAL CAVE RESOURCES LOCATED WITHIN THE NATIONAL PARK SYSTEM.—This section shall not apply to Federal cave resources administered by the National

Park Service or located within units of the National Park System. Collection or removal of natural resources from caves within units of section shall not apply to Federal cave resources administered by the National Park Service, located within any unit of the National Park System, or located within any unit of the National Wildlife Refuge System. Collection or removal of natural resources from caves—

(1) within units of the National Park System shall be carried out in accordance with the provisions of law generally applicable to units of the National Park System; and

(2) within units of the National Wildlife Refuge System shall be carried out in accordance with the provisions of the National Wildlife Refuge System Administration Act of 1966 (16 USC 668dd et seq.).

SEC. 7. PROHIBITED ACTS AND CRIMINAL PENALTIES.

(a) PROHIBITED ACTS.—Except for disturbances which are specifically authorized under section 4(c) or 6 of this Act or which normally occur as a result of careful visitation,

(1) Whoever—

(A) in any manner destroys, disturbs, defaces, mars, alters, or harms any cave resource located on Federal lands,

(B) enters a cave resource with the intention of committing any act described in subparagraph (A),

shall be punished in accordance with subsection (b).

(2) Whoever—

(A) kills, injures, or otherwise interferes with any cave life located in a cave on Federal lands,

(B) interferes or obstructs the free movement of any cave resource into or out of any cave located on Federal lands, or

(C) enters any cave located on Federal lands with the intention of committing any act described in subparagraphs (A) or (B),

shall be punished in accordance with subsection (b).

(3) Whoever collects or removes any natural resource found within any cave located on Federal lands, except pursuant to a valid permit issued under section 6, shall be punished in accordance with subsection (b).

(4) Whoever possesses, consumes, sells, barters or exchanges, or offers for sale, barter or exchange, any natural resource removed from any cave located on Federal lands, except pursuant to a valid permit issued under section 6, shall be punished in accordance with subsection (b).

(5) Whoever counsels, procures, solicits, or employs any other person to violate any provisions of this subsection shall be punished in accordance with section (b).

(b) PUNISHMENT.—The punishment for violating any provision of subsection (a) shall be imprisonment of not more than one year or a fine in accordance with title 18, United States Code, or both. In the case of a second or subsequent such violation, the punishment shall be imprisonment not more than three years or a fine in accordance with title 18, United States Code, or both.

(c) EXCEPTION.—This section shall not apply with respect to any Federal cave resource administered by the National Park Service or located within units of the National Park System.

SEC. 8. CIVIL PENALTIES.

(a) ASSESSMENT.—(1) Any person who violates any prohibition contained in this Act, any regulation promulgated pursuant to this Act, or any permit issued under this Act may be assessed a civil penalty. No penalty may be assessed under this section unless such person is given notice and opportunity for a hearing with respect to such violation. Each violation shall be a separate offense, even if such violations occurred at the same time.

(2) The amount of such penalty shall be determined under regulations promulgated pursuant to this Act.

(b) JUDICIAL REVIEW.—Any person aggrieved by an assessment of a civil penalty under subsection (a) may file a petition for judicial review of such assessment with the United States District Court for the District of Columbia or for the district in which the violation took place. Such a petition must be filed within the 30-day period beginning on the date such assessment was made.

SEC. 9. AUTHORIZATION OF APPROPRIATIONS, SPECIAL FUND FOR FEDERAL CAVE RESOURCES.

(a) AUTHORIZATION.—There is authorized to be appropriated such sums as may be necessary to carry out this Act.

(b) FUND.—Any monies—

(1) collected by the United States as permit fees for use of Federal cave resources,

(2) received by the United States as a result of the forfeiture of a bond or other security by a permittee who does not comply with the requirements of such permit issued under section 7, or

(3) collected by the United States by way of civil penalties or criminal fines for violations of this Act,

shall be placed in a special fund in the Treasury and expended (to the extent provided for in advance in appropriation Acts) as the Secretary shall determine for the improved man-

agement, benefit, repair, or restoration of the particular Federal cave resource affected or damaged.

SEC. 10. REGULATIONS.

The Secretary of Agriculture and the Secretary of the Interior shall issue joint regulations implementing the provisions of this Act.

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II

100TH CONGRESS
2D SESSION

H. R. 1975

IN THE SENATE OF THE UNITED STATES

MARCH 29 (legislative day, MARCH 21), 1988
Received; read twice and referred to the Committee on Energy and Natural Resources

AN ACT

To protect cave resources on Federal lands, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the "Federal Cave Resources Protection Act of 1988".

SEC. 2. FINDINGS, PURPOSES, AND POLICY.

(a) FINDINGS.—The Congress finds and declares that—

(1) cave resources on Federal lands are an invaluable and irreplaceable part of the Nation's natural heritage; and

(2) these resources are threatened due to improper use, increased recreational demand, urban spread, and a lack of specific statutory protection.

(b) PURPOSES.—The purposes of this Act are—

(1) to secure, protect, and preserve cave resources on Federal lands for the perpetual use, enjoyment, and benefit of all people, and

(2) to foster increased cooperation and exchange of information between governmental authorities and those who utilize cave resources located on Federal lands for scientific, educational, or recreational purposes.

(c) POLICY.—It is the policy of the United States that cave resources be managed in a manner that will protect and maintain such resources for present and future public use.

SEC. 3. DEFINITIONS.

For purposes of this Act:

(1) CAVE.—The term "cave" means any naturally occurring void, cavity, recess, or system of interconnected passages which occurs beneath the surface of the earth or within a cliff or ledge (including any natural resource therein, and natural subsurface water and drainage systems, but not including any vug, mine, tunnel, aqueduct, or other man-made excavation) and which is large enough to permit an individual to enter,

whether or not the entrance is naturally formed or man-made. Such term shall include any natural pit, sinkhole, or other feature which is an extension of the entrance.

(2) FEDERAL LANDS.—The term "Federal lands" means lands which are owned by the United States and administered by the Secretary of Agriculture or the Secretary of the Interior.

(3) INDIAN LANDS.—The term "Indian lands" means lands of Indian tribes or Indian individuals which are either held in trust by the United States for the benefit of an Indian tribe or subject to a restriction against alienation imposed by the United States.

(4) FEDERAL CAVE RESOURCE.—The term "Federal cave resource" means a cave located on Federal lands or Indian lands, together with associated topographic and hydrological features.

(5) INDIAN TRIBE.—The term "Indian tribe" means any Indian tribe, band, nation, or other organized group or community of Indians, including any Alaska Native village or regional or village corporation as defined in, or established pursuant to, the Alaska Native Claims Settlement Act (43 U.S.C. 1601 et seq.).

(6) NATURAL RESOURCE.—The term "natural resource" includes any material or substance occurring naturally in caves, such as animal life, plant life, paleontological deposits, sediments, minerals, speleogens, speleothems, and water.

(7) SECRETARY.—The term "Secretary" means the Secretary of Agriculture or the Secretary of the Interior, as appropriate.

(8) SPELEOTHEM.—The term "speleothem" means any natural mineral formation or deposit occurring in a cave or lava tube, including but not limited to any stalactite, stalagmite, helictite, cave flower, flowstone, concretion, drapery, rimstone, or formation of clay or mud.

(9) SPELEOGEN.—The term "speleogen" means relief features on the walls, ceiling, and floor of any cave or lava tube which are part of the surrounding bedrock, including but not limited to anastomoses, scallops, meander niches, petromorphs and rock pendants in solution caves and similar features unique to volcanic caves.

SEC. 4. SPECIAL MANAGEMENT ACTIONS.

(a) IN GENERAL.—The Secretary shall take such actions as may be necessary to further the purposes of this Act. Those actions may include (but are not limited to)—

(1) regulation and restriction of use of Federal cave resources;

(2) entering into volunteer management agreements with persons of the scientific and recreational caving community; and

(3) appointment of advisory committees.

(b) PLANNING AND PUBLIC PARTICIPATION.—The Secretary shall—

(1) ensure that Federal cave resources are considered in any land management plan prepared, revised, or amended after the enactment of this Act; and

(2) foster communication, cooperation, and exchange of information between land managers, those who utilize cave resources, and the public.

Nothing in this Act shall be deemed to require the preparation, revision, or amendment of any land management plan not otherwise required by applicable law.

(c) DISTURBANCE OF FEDERAL CAVE RESOURCES FOR MANAGEMENT PURPOSES.—The Secretary may disturb Federal cave resources where the Secretary finds that such a disturbance is necessary for the management or interpretation of a Federal cave resource and where the disturbance is consistent with applicable land management plans and the regulations under section 10. Such disturbance should not be treated as a violation of any provision of section 7.

(d) EXEMPTION.—The Secretary may exempt any cave located on Federal lands or Indian lands from any or all of the provisions of this Act if he determines that management of the cave pursuant to such provisions is inappropriate. The Secretary shall promulgate regulations under which such exemptions may be granted. The regulations shall require that the Secretary publish a public notice setting forth the reasons why the Secretary determines that the cave should be exempted from the provision or provisions concerned and that the Secretary provide an opportunity of at least 30 days for public comment before such exemption takes effect.

SEC. 5. CONFIDENTIALITY OF INFORMATION CONCERNING NATURE AND LOCATION OF FEDERAL CAVE RESOURCES.

(a) IN GENERAL.—Information concerning the nature or location of any Federal cave resource may not be made available to the public under section 552 of title 5, United States Code, unless the Secretary determines that disclosure of such information would further the purposes of this Act and would not create a substantial risk of harm, theft, or destruction of such resources.

(b) EXCEPTIONS.—(1) Notwithstanding subsection (a), upon the written request of the Governor of the State in which a cave resource is located, which includes in such requests—

(A) the specific site or area for which information is sought,

(B) the purpose for which such information is sought, and

(C) a commitment by the Governor to adequately protect the confidentiality of such information to ensure the protection of the cave resource from destruction by vandalism and unauthorized use,

the Secretary shall provide to the Governor information concerning the nature and location of Federal cave resources located within such site or area.

(2) Notwithstanding subsection (a), upon the written request of any bona fide research institution, which includes in such request—

(A) the specific site or area for which information is sought,

(B) the purpose for which such information is sought,

(C) a commitment by such institution to adequately protect the confidentiality of such information to ensure the protection of the cave resource from vandalism and unauthorized use,

the Secretary may, after considering the purpose for which such information is sought and the value of the proposed use and activities in terms of enhancing understanding of the

cave resource, furnish the requesting institution with information concerning the nature and location of caves and natural resources located in caves upon lands located within such site or area.

SEC. 6. COLLECTION AND REMOVAL FROM FEDERAL CAVES.

(a) PERMIT.—(1) Any person may apply to the Secretary for a permit to collect or remove any natural resource from caves located on Federal lands or Indian lands and to carry out activities associated with such collection or removal. The application shall contain such information as the Secretary deems necessary, including information concerning the time, scope, location, specific purpose of the proposed collection or removal and associated activity, and the manner in which such collection or removal and associated activity is to be performed.

(2) Unless the Secretary determines that such collection or removal and associated activity will not pose a substantial risk of harm to the cave resource, the Secretary shall require the permittee to post a bond or cash deposit in an amount sufficient to—

(A) ensure compliance with this Act and regulations issued pursuant to this Act; and

(B) offset any potential damage sustained by the cave resource as a result of the actions of the permittee.

(3) The Secretary may approve a permit under this subsection if the Secretary determines that the proposed collection or removal activities are consistent with the purposes of this Act and with other applicable provisions of law.

(b) REVOCATION OF PERMIT.—Any permit issued under this section shall be revoked by the Secretary upon a determination by the Secretary that the permittee has violated any provision of subsection (a) or (b) of section 7, or has failed to comply with any other condition upon which the permit was issued. Any such permit shall be revoked by the Secretary upon assessment of a civil penalty under section 8 against the permittee or upon the permittee's conviction under section 7. The Secretary may refuse to issue any permit under this section in the case of any person who has violated any provision of subsection (a) or (b) of section 7 or who has failed to comply with any condition of a prior permit issued to such person.

(c) TRANSFERABILITY OF PERMITS.—Permits issued under this Act are not transferable.

(d) FEDERAL CAVE RESOURCES LOCATED ON INDIAN LANDS.—(1)(A) Upon application by an Indian tribe, the Secretary of the Interior shall delegate all authority of the Secretary under this section with respect to issuing and enforcing permits for the collection or removal of any natural resource, or to carry out activities associated with such col-

lection or removal, from any Federal cave resource located on the Indian lands concerned.

(B) In the case of any permit issued by the Secretary for the collection or removal of any natural resource, or to carry out activities associated with such collection or removal, from any Federal cave resource located on Indian lands (other than permits issued pursuant to subparagraph (A)), the permit may be issued only after obtaining the consent of the Indian or Indian tribe owning or having jurisdiction over such lands. The permit shall include such terms and conditions as may be requested by such Indian or Indian tribe.

(2) If a permit issued by the Secretary under this section may result in harm to, or destruction of, any religious or cultural site, as determined by the Secretary, before issuing such permit, the Secretary shall notify any Indian tribe which may consider the site as having religious or cultural importance. Such notice shall not be deemed a disclosure to the public for purposes of section 5.

(3) A permit issued by the Secretary shall not be required under this section for the collection or removal of any natural resource, or to carry out activities associated with such collection or removal, by any Indian tribe or member thereof from any Federal cave resource located on Indian lands of such Indian tribe.

(e) EFFECT OF PERMIT.—No action specifically authorized by a permit under this section shall be treated as a violation of section 7.

(f) EXCEPTION.—This section shall not apply with respect to any Federal cave resource administered by the National Park Service, located within any unit of the National Park System, or located within any unit of the National Wildlife Refuge System.

SEC. 7. PROHIBITED ACTS AND CRIMINAL PENALTIES.

(a) PROHIBITED ACTS.—

(1) Whoever—

(A) in any manner knowingly destroys, disturbs, defaces, mars, alters, or harms any cave resource located on Federal lands or Indian lands, or

(B) enters a Federal cave resource with the intention of committing any act described in this paragraph (A),

shall be punished in accordance with subsection (b).

(2) Whoever—

(A) knowingly kills, injures, or otherwise interferes with any natural resource located in a cave on Federal lands or Indian lands, or interferes or obstructs the free movement of any natu-

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ral resource into or out of any cave located on Federal lands or Indian lands, or

(B) enters a Federal cave resource located on Federal lands or Indian lands, with the intention of committing any act described in subparagraph (A),

shall be punished in accordance with subsection (b).

(3) Whoever knowingly collects or removes any natural resource found within any cave located on Federal lands or Indian lands shall be punished in accordance with subsection (b).

(4) Whoever possesses, consumes, sells, barters or exchanges, or offers for sale, barter or exchange, any natural resource with knowledge or reason to know that such resource was removed from any cave located on Federal lands or Indian lands shall be punished in accordance with subsection (b).

(5) Whoever counsels, procures, solicits, or employs any other person to violate any provisions of this subsection shall be punished in accordance with section (b).

(6) The prohibitions contained in this subsection shall not apply to any action authorized under other applicable State or Federal laws (including fish and wildlife laws).

(b) PUNISHMENT.—The punishment for violating any provision of subsection (a) shall be imprisonment of not more than one year or a fine in accordance with title 18, United States Code, or both. In the case of a second or subsequent such violation, the punishment shall be imprisonment of not more than 3 years or a fine in accordance with title 18, United States Code, or both.

(c) EXCEPTION.—This section shall not apply with respect to any Federal cave resource administered by the National Park Service, located within any unit of the National Park System, or located within any unit of the National Wildlife Refuge System.

SEC. 8. CIVIL PENALTIES.

(a) ASSESSMENT.—(1) The Secretary may issue an order assessing a civil penalty against any person who violates any prohibition contained in this Act, any regulation promulgated pursuant to this Act, or any permit issued under this Act. Before issuing such an order to any person, the Secretary shall give to such person written notice and the opportunity to request a hearing within 30 days. Each violation shall be a separate offense, even if such violations occurred at the same time. A hearing under this subsection shall not be subject to section 554 or 556 of title 5 of the United States Code but shall provide a reasonable opportunity to be heard and to present evidence.

(2) The amount of such penalty shall be determined by the Administrator taking into account appropriate factors, including (A) the seriousness of the violation; (B) the economic benefit (if any) resulting from the violation; (C) any history of such violations; and (D) such other matters as justice may require.

(b) JUDICIAL REVIEW.—Any person aggrieved by an assessment of a civil penalty under subsection (a) may file a petition for judicial review of such assessment with the United States District Court for the District of Columbia or for the district in which the violation took place. Such a petition shall be filed within the 30-day period beginning on the date the order assessing the civil penalty was issued. The Secretary shall promptly file in such court a certified copy of the record on which such penalty was assessed. The district court shall not set aside or remand such penalty unless there is not substantial evidence on the record, taken as a whole, to support the finding of a violation or, unless the Secretary's assessment of penalty or requirement for compliance constitutes an abuse of discretion.

(c) COLLECTION.—If any person fails to pay an assessment of a civil penalty—

(1) within 30 days after the order was issued under subsection (a), or

(2) if the order is appealed within such 30-day period, within 10 days after the court has entered a final judgment in favor of the Secretary under subsection (b),

the Secretary shall notify the Attorney General and the Attorney General shall bring a civil action in an appropriate United States district court to recover the amount a penalty assessed (plus costs, attorneys' fees, and interest at currently prevailing rates from the date the order was issued or the date of such final judgment, as the case may be). In such an action, the validity, amount, and appropriateness of such penalty shall not be subject to review.

(d) SUBPOENAS.—The Secretary may issue subpoenas in connection with proceedings under this subsection compelling the attendance and testimony of witnesses and subpoenas duces tecum, and may request the Attorney General to bring an action to enforce any subpoena under this section. The district courts shall have jurisdiction to enforce such subpoenas and impose sanctions.

(e) EXCEPTION.—This section shall not apply with respect to any Federal cave resource administered by the National Park Service, located within any unit of the National Park System, or located within any unit of the National Wildlife Refuge System.

SEC. 9. AUTHORIZATION OF APPROPRIATIONS, SPECIAL FUND FOR FEDERAL CAVE RESOURCES.

(a) AUTHORIZATION.—There are authorized to be appropriated such sums as may be necessary to carry out this Act.

(b) FUND.—Any money—

(1) collected by the United States as permit fees for use of Federal cave resources,

(2) received by the United States as a result of the forfeiture of a bond or other security by a permittee who does not comply with the requirements of such permit issued under section 7, or

(3) collected by the United States by way of civil penalties or criminal fines for violations of this Act,

shall be placed in a special fund in the Treasury. Such moneys shall be available for obligation or expenditure (to the extent provided for in advance in appropriation Acts) as the Secretary shall determine for the improved management, benefit, repair, or restoration of the particular Federal cave resource affected or damaged.

SEC. 10. REGULATIONS.

The Secretary of Agriculture and the Secretary of the Interior shall each issue regulations implementing the provi-

sions of this Act. Such regulations shall be consistent with the purposes and policies of this Act.

Passed the House of Representatives March 28, 1988.

Attest: DONNALD K. ANDERSON,

Clerk.

Senator FOWLER. The record will remain open for two weeks for the purpose of receiving additional material and statements.

Our witness list includes several Members of Congress. We will start with Mr. Denis P. Galvin, the Deputy Director of the National Park Service; and Mr. Tom Allen, the Assistant Director for Management Services, the Bureau of Land Management; and Mr. George Leonard, the Associate Chief of the Forest Service.

I just got a note that Mr. Galvin has been delayed and will be here in a moment.

Good morning. Please proceed at will, and you can summarize.

STATEMENT OF GEORGE M. LEONARD, ASSOCIATE CHIEF, FOREST SERVICE, DEPARTMENT OF AGRICULTURE

Mr. LEONARD. Good morning, Mr. Chairman. I'm George Leonard, Associate Chief of the Forest Service. I would like to offer comments on both H.R. 1173 and the cave protection bills.

We recommend that H.R. 1173 be amended to exclude those national monuments administered by the Forest Service from the general proposed restriction against new construction of dams or impoundments. We note that the House Interior Committee report on H.R. 1173 provided that it specifically applies only to those units of the national park system that are designated as parks or monuments. However, the bill as written would also apply to the national monuments administered by the Forest Service, and we don't believe that's appropriate. We don't believe it's appropriate, for example, for the National Park System to have the responsibility for determining the nature of any impoundments that might impact on a national forest national monument.

Also, each of the three national monuments that are administered by the Forest Service were prepared with specific provisions for their management. At the Mount St. Helen's national monument, for example, we have constructed flood control and debris control facilities constructed because of the tremendous instability of the landscape as a result of the volcanic eruption there. Those facilities are vital to the protection of downstream communities and navigation in the Columbia River. And the bill as written would preclude emergency or other work necessary to maintain those facilities. So, again, we would recommend that the national monuments administered by the Forest Service be excluded from the bill.

With regard to the Cave Resources Protection Act, the caves on the Federal lands and on the national forests are a vital part of our natural heritage. They are important scientific, educational and recreational assets. There is, indeed, a need for increased protection of these facilities, and we support efforts to do so.

However, not every void, cavity or recess on the Federal lands is worthy of protection. Many are truly insignificant. And even where a cave may possess some value, there is a need to provide some way for weighing that value against the value of other potential uses.

In view of the failure of the two bills before the committee to provide some discretion for the Secretary to make judgments as to significance or to balance the value of the cave resource against

other multiple use values of the area, we do not support enactment at this time.

If the bills could be amended to provide for a degree of discretion by the Secretary, and if the House amendment which provides for a method of excluding caves from that protection where it's determined by the Secretary to not be appropriate, that would address our major concerns with these bills.

We would note that in our full testimony we have indicated a number of areas, including legal issues with regard to definitions and some ambiguity which could significantly improve the bill, and we [would] urge the committee's consideration of those suggestions. We understand the interest of the committee in moving these bills ahead, and we would be prepared to offer both staff and legal support to an effort to draft amendments to make these bills acceptable.

Mr. Chairman, that concludes my statement.

[The prepared statement of Mr. Leonard follows:]

STATEMENT OF
GEORGE M. LEONARD, ASSOCIATE CHIEF
FOREST SERVICE
UNITED STATES DEPARTMENT OF AGRICULTURE

Before the
Subcommittee on Public Lands, National Parks and Forests
Committee on Energy and Natural Resources
United States Senate

Concerning
H.R. 1173, Land Use Restrictions Within National Parks and Monuments
and
S. 927 and H.R. 1975, Federal Cave Resources Protection Act

June 16, 1988

MR. CHAIRMAN AND MEMBERS OF THE SUBCOMMITTEE:

Thank you for this opportunity to offer the Department of Agriculture's views on H.R. 1173, a bill to restrict use of lands within national parks and monuments, and S. 927 and H.R. 1975, the Federal Cave Resources Protection Act of 1987.

H.R. 1173 - LAND USE RESTRICTIONS WITHIN NATIONAL PARKS AND MONUMENTS

We recommend that H.R. 1173 not be enacted unless it is amended to exclude National Monuments administered by the Forest Service from the proposed general restriction against new construction of dams or other impoundments.

H.R. 1173 would provide for certain restrictions on the use of lands within boundaries of National Parks and Monuments. The language fails to take into consideration the existence of those monuments administered by the Forest

Service. Although, we recognize that the House Interior Committee report on the bill states that "H.R. 1173 specifically applies only to those units of the National Park System that are designated as 'Parks or Monuments'," as written, H.R. 1173 would require the National Park Service, rather than the Forest Service, to determine any development of impoundments within a National Monument administered by the Forest Service. These particular National Monuments were authorized by acts of Congress with specific management provisions addressing a broad spectrum of uses. The bill would adversely impact these provisions. For example, the flood control dam at Spirit Lake on the Mount St. Helens National Monument is a vitally important structure. It is conceivable that reconstruction or expansion of this facility may be necessary at some future time. The bill would prohibit this. We prefer that the limitation to National Park Service Monuments in the House Interior report language be incorporated into the statuatory language of H.R. 1173.

S. 927 AND H.R. 1975 - FEDERAL CAVE RESOURCES PROTECTION ACT OF 1987

Caves on Federal lands are a vital part of our natural heritage. They are important scientific, educational, and recreation assets. There is, indeed, a need for increased efforts to secure, protect, and preserve cave resources on Federal lands. We support efforts to do so. However, not every void, cavity, or recess on the vast Federal estate possesses scientific, educational, or recreational value. Many are truly insignificant. And even where a cave may possess some value, there is a need to provide some way for weighing that value against the value of other potential uses of the area.

In view of the failure of the two bills to provide some discretion to the Secretary to make judgements as to significance, or to balance the value of a cave resource against other public values in an area, we cannot support enactment of either bill.

On July 23, 1987, we testified before the House Subcommittee on National Parks and Public Lands regarding H.R. 1975. At that time, we said we would not object to enactment if several amendments were made. One amendment would have allowed the Secretary to disturb Federal cave resources where the disturbance would be necessary to meet other multiple use objectives. The second amendment would have deleted the requirement for joint Interior and Agriculture regulations. In addition, we opposed earmarking of receipts from permits, forfeitures, and penalties relating to cave resource management. We also supported the "Savings Provision" amendment recommended by the Secretary of the Interior. The House did not adopt the amendments we recommended, therefore the Administration opposed enactment of the bill when it came on the House floor under suspension of the rules. A legislative report on S. 927, containing these recommendations, was sent to this Committee in November 1987.

While we support the overall purpose of S. 927 and H.R. 1975 to protect Federal cave resources, we have further analyzed the likely effects of these bills. In addition to our primary concern about the lack of Secretarial discretion, we are concerned that these bills would significantly and unreasonably hamper management of the National Forest System. Additionally, our legal counsel has concluded that these bills contain serious legal flaws that must be resolved.

We are advised that the criminal provisions are unconstitutionally vague. It would be impossible for a person to reasonably ascertain what conduct constitutes a criminal violation. For example, it would be a felony if a person ". . . interferes with or obstructs the free movement of any natural resource . . ." A natural resource is broadly defined to include water. Thus, under these bills, standing or sitting in an underground stream could be a felony. We think this goes well beyond what is reasonable.

The criminal provisions have further problems due to the use of undefined terms, the inconsistent use of terms, overly broad and unreasonable provisions regarding possession of resources which may have come from caves prior to enactment, and ambiguous exceptions for actions ". . . authorized under . . . State or Federal laws . . ."

Several legal problems are not addressed by the bills. Among them is the problem of split estates. The legal obligation of the Federal land managing agency is unclear in situations where the United States owns the surface estate and the subsurface rights are in private ownership. Similarly, there is the reverse situation where the United States only owns the mineral rights. The relationship of this proposal to the Federal mining and mineral leasing laws is unclear. What are the rights and duties of the United States when a cave is discovered in the course of lawful mineral activities?

The purpose of these bills is to ". . .secure, protect, and preserve cave resources. . . " We believe that the purpose should refer to <u>significant</u> caves, as defined by the appropriate land managing agency in regulations.

Both bills would authorize the Secretary to disturb Federal cave resources where such disturbance is necessary for management or interpretation of the cave. H.R. 1975 goes on to require that such disturbance be consistent with applicable land management plans. This approach is very restrictive and could eliminate or cause undue delays to multiple use activities in the vicinity of caves. We firmly believe that potential disturbance to caves that could be caused by any management activity should be thoroughly considered in land management planning. As I said earlier, there may be compelling reasons to disturb caves to further the management of other resources. The Secretary should have the authority to make this judgement in accord with appropriate plans.

H.R. 1975 provides a mechanism for exempting caves from the provisions of the Act. We believe that many of the decisions that would be made under this provision would be controversial and require NEPA analysis and possibly environmental impact statements. They would also be subject to administrative appeals.

We also have concerns regarding the confidentiality provisions and the vague references to consideration of caves in land management plans. We object to the establishment of a special fund in the Treasury for management of caves. We believe the small amount of funds likely to be collected from permits, forfeitures, and penalties should be deposited in the Treasury as are most similiar receipts. Our current appropriations authority is sufficient to carry out the purposes of the bill. We further object to the joint Interior and Agriculture regulations specified in S. 927.

Although we cannot recommend enactment of either S. 927 or H.R. 1975, I would like to offer our assistance in drafting a bill we could support. We could support a "cave management" bill that would not unnecessarily restrict management of the National Forest System for other multiple-use objectives. We would not object to consideration of significant caves as Forest Plans are revised. We would also support appropriate provisions for confidentiality and for a permit and regulation system for significant caves. We believe a bill could be drafted that would achieve most of the purposes of S. 927 and H.R. 1975 and still be legally and practically sound.

Mr. Chairman, this concludes my statement. I would be happy to answer any questions.

Senator FOWLER. Thank you, Mr. Leonard, for those helpful suggestions.

In your current land management plans, what provisions are made for cave resources? Or are there any?

Mr. LEONARD. Mr. Chairman, in 1986, we adopted some policies on the protection of cave resources on the national forests with the intent that significant caves be identified through the land management planning process and then appropriate protective steps be prescribed in those land management plans for insuring that the integrity of those cave resources is maintained and, where appropriate, interpretive services and other features provided.

Senator FOWLER. Has that been done?

Mr. LEONARD. It has been done in some instances. It's not completed.

Senator FOWLER. Where has it been done?

Mr. LEONARD. Probably the best example on the National Forest System is Blanchard Springs Cavern [systems] in the Ozarks where we have made a major development in providing facilities, guide service and other interpretive services for the public, parking facilities, and whatnot. But generally throughout the system, I will have to admit that we have not made substantial progress in dealing with cave resources.

Senator FOWLER. Where on Federal lands are most of the cave resources found?

Mr. LEONARD. They tend to be concentrated in two areas, those areas with limestone geologic structures where you have natural erosion of the limestone structure and you get the major caverns. And those are located throughout the eastern and southern states and to some extent in some areas in the west. And then in the areas of volcanic origin, we have lava tubes and other facilities there, again a natural feature of the volcanic environment.

Senator FOWLER. As a result of your decision and planning that you just described in 1986, how much of your budget, the BLM budget, is now dedicated to cave management?

Mr. LEONARD. At this point I'd have to say a negligible amount except for the expenditures at Blanchard Caverns which is probably several hundred thousand dollars a year.

Senator FOWLER. Thank you, Mr. Leonard. Thanks for being with us.

We have two of my colleagues here. Tom and Congressman Lehman, are either one of you under time constraints where one needs to go before the other?

[No response.]

Senator FOWLER. Then we would yield to the people's branch and allow the man of the people go first. I'm sure Senator Daschle will not mind. We're pleased to welcome Congressman Richard Lehman of the United States House of Representatives from California. Just be brief because your colleague is waiting.

[Subsequent to the hearing the Department of Agriculture submitted the following:]

United States Department of Agriculture | Forest Service | Washington Office | 12th & Independence SW
P.O. Box 96090
Washington, D.C. 20090-6090

Reply To: 1510

1988 JUL 14 PM 3:26

Date: JUL 12 1988

Honorable Dale Bumpers
Chairman, Subcommittee on Public Lands,
National Parks and Forests
Committee on Energy and Natural Resources
United States Senate
Washington, DC 20510

Dear Mr. Chairman:

Enclosed are our responses to the Subcommittee's questions enclosed with your June 24 letter. These questions are related to the June 16 hearing on S. 927 and H.R. 1975 concerning management of caves on Federal lands.

Please let us know if we may be of further assistance.

Sincerely,

F. DALE ROBERTSON
Chief

Enclosure

Questions of the Department of Agriculture
from the
Subcommittee on Public Lands, National Parks and Forests
regarding
S. 927 and H.R. 1975
Management of Caves on Federal Lands

Question: Are cave resources adequately managed under current land management planning? What provisions are made for cave management in the land management plans?

Forest Land and Resource Management Plans primarily address major issues. In most cases, caves were not considered to be a major issue at the time the current Forest Plans were initiated. Therefore, most Forest Plans prescribe little specific direction for management of cave resources. If a cave resource was known, the Forest Plan may contain direction for the cave's preservation and interpretation. If the cave resource was unknown, the Forest Plan does not contain specific direction for cave management. We believe most Forest Plans adequately addressed the management of known cave resources at the time the plan was prepared.

There are a few National Forests, such as the Mark Twain in Missouri and the Daniel Boone in Kentucky, where caves were considered as a major issue. Where this occurred, specific direction for management of caves was developed in the Forest Plan.

Most activities planned on the National Forest will not physically alter cave resources. However, land management activities such as road construction, recreation site development, or timber harvest may change the adjacent surface characteristics. Forest Plans are flexible in their direction so if a cave is located during site-specific project planning or implementation, immediate provisions may be made for preservation of the resource. The Forest Plan may then be amended to provide specific management direction for the discovered cave resource.

More specific direction for the consideration of cave resources in Forest Plans has recently been issued in response to increased awareness of and concern for this important resource. As a result, we will incorporate cave management prescriptions into all Forest Plans as they are revised. This will assure that recreational, cultural, educational, and scientific study opportunities are considered and balanced with the management of the other resources on the National Forests. Increased attention is being given to the prevention of vandalism and other types of damage.

Question: Where on Federal lands are most of the cave resources found?

The more significant caves within National Forests are in Alabama, Arkansas, California, Colorado, Idaho, Illinois, Indiana, Kentucky, Missouri, Montana, Nevada, New Mexico, North Carolina, Oregon, South Dakota, Utah, Vermont, Virginia, Washington, West Virginia, and Wyoming.

Under the broad definition of a "cave" in the proposed bills, caves would be found in almost all of the National Forests.

Question: What portion of the Forest Service budget is dedicated to cave management?

Cave management is financed from within the appropriation for recreation management. We do not have readily available data on the amount spent specifically for cave management.

STATEMENT OF HON. RICHARD H. LEHMAN, U.S. REPRESENTATIVE FROM CALIFORNIA

Mr. LEHMAN. Thank you very much, Mr. Chairman. I appreciate that, and I appreciate Senator Daschle's courtesy.

It's an honor to appear before you today in support of H.R. 1173. Senator Fowler, I certainly appreciate your willingness to take time from your schedule to chair today's hearing.

This bill does only two basic things. First of all, it prohibits the construction of new dams in national parks and monuments and, secondly, it would prohibit the expansion of any reservoir within Yosemite National Park unless Congress specifically enacts legislation to that end.

I first became interested in our national policy with regard to dams in national parks when I learned in 1981 about a systemwide power study for the City of San Francisco which recommended raising O'Shaughnessy Dam in a national park that I represent, that being Yosemite. The city believed it could raise the dam by 50 to 160 feet which would inundate the Tuolumne River upstream and flood 500 to 900 acres of this premier national park. The never-ending authority cited for expansion of Hetch Hetchy facilities is a law Congress passed 75 years ago known as the Raker Act.

In 1985, in the course of responding to my objection to an additional generator on the Tuolumne River outside Yosemite National Park, the Department of the Interior agreed with me as a matter of administrative law that—and I quote from the Department—"no further expansion of the Hetch Hetchy Water and Power System will be permitted by the Department of the Interior within Yosemite National Park."

Mr. Chairman, this important administrative principle must be embodied in statutory law so that the future of Yosemite is not left to future interpretation by Departments of the Interior, the courts or the City of San Francisco.

That situation at Yosemite led me and the House Subcommittee on National Parks and Public Lands to explore that problem elsewhere in this country. We learned from our deliberations that 18 of our 48 national parks currently contain 108 dams, some very small, but others very large, indeed. Most importantly, we learned that the very best of our American landscape, our national parks, does not have a clear and unambiguous statutory protection from future water and power construction.

According to the Congressional Research Service, there are at least three instance when existing law may be inadequate in this regard. First, the question still exists about hydroelectric facilities which could be built in parks created after 1921 when the Federal Power Act prohibited the issuance of license for hydro projects within the limits of parks and monuments as then constituted. Second, existing law is unclear about construction of dams without hydroelectric components inside national parks. Third, it is not clear whether or not the Federal Government itself is prohibited from constructing dams and parks.

Mr. Chairman, I believe it is time to draw the line on new dam construction in national parks. During the 1913 congressional debate over building a dam in Yosemite, the director of the Bureau

of Reclamation said—and I quote—"I have naturally come to the conclusion that there is nothing more beautiful than a well-built dam with reservoirs behind them." I confess that that I too like well-built dams. I have many in my district serving the area quite well, but I don't believe they belong in our national parks or monuments. And I want to clear this up and replace those policies of 1913 with our new priorities today.

I am pleased to note for the record that the generic provisions of my bill were developed with my chairman, Mr. Vento, and my colleagues on the minority side, Mr. Lagomarsino and Mr. Cheney. The Yosemite provisions were crafted with the aid of Congresswoman Boxer, who represents the City of San Francisco.

Mr. Chairman, my legislation to prohibit new dams in national parks passed the House in 1986 and 1987 without a single dissenting vote. I hope your committee will act favorably on it today. I have worked for several years now on this proposal. I think it's a modest step to protect our parks and ensure that they remain in their natural state in perpetuity. And I also think it's time to write the final chapter of the Raker Act and forever decide the fate of Yosemite so it's not in jeopardy. I thank you.

Senator FOWLER. Congressman Lehman, we all thank you for your leadership on this issue. We are a little more sluggish in the way we do business over here, as both of your former colleagues, Senator Daschle and I, can attest. But you have now succeeded in getting our attention. And these hearings are the first step toward serious consideration of the House-passed bill. Thank you very much.

Mr. LEHMAN. Thank you very much.

Senator FOWLER. We now have the distinguished Senator from South Dakota, Senator Tom Daschle.

STATEMENT OF HON. TOM DASCHLE, U.S. SENATOR FROM SOUTH DAKOTA

Senator DASCHLE. Thank you, Mr. Chairman.

I would ask, first of all, that a full statement and some accompanying data which includes some articles and some letters in support of S. 1927 be inserted in the record.

Senator FOWLER. They will.

Senator DASCHLE. I will be very brief because I know you have a lot of witnesses today and I want to acknowledge before I begin the presence of John Scheltens, who is a good friend of mine, a constituent with the National Speleological Society.

We have 4,000 caves on Federal land right now. The current Chairman, the presiding Chairman here, has 347 caves in Georgia alone. And I don't have to tell you as sensitive as you are to nature and natural habitat what a tremendous resource caves have been in this country not only for wildlife, recreation, but for science, as well as in many cases for drinking water. One-third of all groundwater passes through a karst system.

And yet, in spite of the significance of America's caves, they're being incredibly abused today. There are hundreds of documented examples of malicious destruction. Some have been turned into toxic waste dumps, others into shooting ranges, and in hundreds of

cases, graffiti have permanently destroyed the aesthetic and natural beauty of many of these sites which are obviously millions of years old. In Carlsbad Caverns, it is estimated that more than 10,000 formations have already been broken.

Thus far, efforts to protect these caves have been inconsistent and completely inadequate. For caves that are integrally included in some Federal land management plans, they're not even mentioned in others. And the reason is simple. There is no specificity with regard to the importance of cave resources or their management in Federal law today.

CRS looked at the problem a while back and summed it up very succinctly, and I quote the CRS report. "It appears that the existing land management laws are broad enough to permit management of cave resources, but they do not expressly address that goal or compel that result." So, the trend is that things are getting worse, not better.

And so, we've introduced the Cave Resources Protection Act which I believe at long last will address cave management. It does three things really. It empowers the Secretaries of Interior and Agriculture to include cave resources in land management plans. It assists in the management of distribution of information about caves and their locations and provides criminal penalties to curb malicious vandalism of cave resources. In some respects this bill is patterned after the Archaeological Resource Protection Act of 1979 which has proven to be very successful in dealing with a very similar set of circumstances with archaeological locations.

It enjoys the support of virtually every conservation organization, including the National Speleological Society, and it was passed, as you know, unanimously in the House just recently.

So, it's a good bill. It's an overdue bill. It's a modest step, and I hope that it will warrant the overwhelming support of this committee.

[The prepared statement of Senator Daschle follows:]

Statement of

SENATOR TOM DASCHLE
South Dakota

Before the Committee Energy and Natural Resources
Subcommittee on Public Lands, National Parks, and Forests
June 16, 1988

Mr. Chairman and members of the Subcommittee, I greatly appreciate the opportunity to testify on S. 927, legislation I have introduced to protect our nation's cave resources. I realize that this is not the most glamorous subject this Subcommittee has considered this year, but I believe it is very important nonetheless.

I am pleased to report that this bill is well on its way to passage this year. After prolonged negotiations in the House, the original House companion bill (H.R. 1975) has been revised, and passed unaminously on the House floor. It passed with the enthusiastic support of the National Wildlife Federation, the Sierra Club, the National Audubon Society, Nature Conservancy, the National Speleologicial Society, and many other conservation organizations.

It also passed with an apparent lack of Administration opposition. I say "apparent," because I am advised that, after the House spent several months addressing minor Administration concerns raised during the House hearings, the Administration position is once again unclear. While I am disappointed and perplexed by this late expression of ambivalence, I look forward to hearing the Administration's testimony today, and, if possible, addressing the latest round of concerns raised.

When I was first approached this issue, I must confess I was unsure about the need for protective legislation. However, after going on my maiden spelunking expedition with my close friend John Scheltens, who is here today testifying on behalf of the National Speleological Society, and reading more about the subject, I became convinced that caves are indeed a national resource that we must act to preserve.

Although the term "last frontier" is overused, the term certainly aptly describes caves and karst systems. Thousands of miles of caves have never been seen by humans. Unfortunately, due to their physical location, the significance of caves is less readily apparent than other "last frontiers" that Congress has had the wisdom to preserve in pristine form, such as western wilderness areas, the ocean depths, and the arctic.

Even though this "last frontier" is out of sight, we must not make the mistake of allowing it to be out of mind. From aesthetic, scientific, wildlife, and drinking water conservation perspectives, there are very good reasons to protect caves and cave resources.

Until I went spelunking in Wind Cave near Hot Springs, South Dakota, more than a year ago, I had not have thought of caves as being aesthetically valuable. For me, as for most people, caves conjured up images of dark, cramped places where little biological matter could survive. I found out that nothing could be farther from the truth.

The beauty of caves is different from beauty to which we surface dwellers are generally accustomed, but I found it to be quite impressive. With geological wonders to dazzle the eye and an intriguing, fragile, and complex ecosystem unlike any other place on earth, I believe that the unique aesthetics of caves make them every bit as worthy of our preservation efforts as our natural treasures on the surface. They may even need our preservation efforts more than other areas, since cave ecosystems have a lower tolerance for human abuse than most surface ecosystems.

Caves also have tremendous scientific value. They provide invaluable evidence on biological evolution, serve as breeding spots for unique mold-like bacteria used in life-saving pharmaceuticals, and contain some of the most rare paleontological and archeological finds in the world. They provide us with a unusual glimpse of our own history, and the history of our planet.

Most people undervalue the wildlife significance of caves. There are thousands of species of animals, insects, fish, and plant life that can thrive only in low-light cave environments. Unfortunately, because of our historical lack of sensitivity to caves, 11 cave-dwelling species of wildlife are officially listed as endangered or threatened, and 78 others are under consideration for this designation. This situation will get much worse if we do not take action to protect cave environments.

Finally, most of us forget that underground karst formations are vitally important to the millions of people who get their drinking water from the ground. I am advised that about one-third of all groundwater consumed comes through a karst system. When citizens dump household waste or sewage into a nearby sink hole, which is a frequent practice in some areas, they are unknowingly making a septic tank out of their water supply. Pollution of this type ultimately results in the spread of disease, and sometimes death, as well as the expenditure of millions of tax dollars for municipal water treatment.

Yet despite the significance of caves to our environment and to our daily lives, there are hundreds of documented examples of malicious destruction of cave resources. For instance, a cave on federal land in Idaho was recently used to store toxic wastes. In Kentucky, Thornhill Cave was the the site of a shotgun slaughter of Indiana bats, an endangered species struggling to survive into the 1990s. Many caves now look more like the graffiti-covered New York subway than the magnificent natural resource they were just a few years ago. Even in well protected Carlsbad Caverns, some 10,000 formations that took thousands of years to form have been broken by souvenir seekers, and the problem is much worse in unprotected caves.

Indeed, a few have turned some of our most wonderful caves into toxic dumping grounds, shooting ranges, sources for the underground artifact market, graffiti galleries, and party halls. We must begin to realize that caves are non-renewable resources, and plan to protect them before they are lost forever.

With over 4000 caves on federal land, the federal government is by far the largest owner of caves in the nation. Unfortunately, however, our efforts to protect cave resources have been very spotty, and mostly inadequate. For instance, while federal land managers have done an excellent job in working caves into their management plan for the Washakie Resource Area in western Wyoming, land managers in the nearby Big Horn National Forest failed to even mention the word "cave" in their lengthy management plan.

The reason for this inconsistency is the lack of specificity in federal law with regard to the importance of cave resources on federal lands. The Congressional Research Service recently described the problem in a study on the adequacy of cave protection laws: "It appears that the existing land management laws are broad enough to permit managment of cave resources, but they do not expressly address that goal or compel that result."

Considering the value of cave resources and the alarming rate at which we are losing those resources to vandals, the absence of specific direction from Congress regarding cave resource protection is disturbing. The Cave Resources Protection Act (S. 927) provides that direction and specific authority to take real steps to protect caves and cave resources on federal land.

S. 927 empowers the Secretaries of Interior and Agriculture to include cave resources in land management plans. Integrating cave preservation into land use plans will not

prevent "multiple use" of federal lands. On the contrary, I believe knowing where "signficant caves" are located will challenge land managers to plan for the peaceful coexistence of recreation, mining, quarrying, grazing, and our nation's finest speleological resources. Clearly, cave preservation fits in that "multiple use" scheme.

The bill also authorizes the Departments of Interior and Agriculture to withhold information on the location of a cave if they feel disclosure of that information would put the resource at risk. Currently, cave enthusiasts have more extensive knowledge about the location and nature of caves on federal land than many federal land managers. The caving community, however, is reluctant to reveal cave sites, fearing that such disclosure will result in abuse of caves. My bill encourages caving organizations to share these site locations with federal officials with the understanding that only governors or scientists with special needs will be told of their existence.

This provision is key. We cannot expect federal land planners to protect a resource they do not know is in existence. Cooperation and interaction between the speleological community and the government will help ensure that land managers understand the nature and extent of their sub-surface resources and make wise land use decisions based on that knowledge.

There is precedent for this kind of withholding provision. The Archaeological Resources Protection Act of 1979 (ARPA) has worked well to protect archaeological resources by allowing the withholding of information in certain circumstances.

Among other things, S. 927 would also institute a permit system and criminal penalties to curb malicious vandalism of cave resources. It also establishes a cave management fund utilizing money collected from cave permit fees and fines.

I want to stress that the purpose of this bill is not to have land managers wasting their time writing plans for "insignificant holes in the ground," or to disallow the multiple use of federal lands. It does not call for additional appropriations, staffing, or resources. It simply establishes that 1) caves and cave resources are important; 2) the protection and preservation of significant caves on federal land is the responsability of the federal government; and 3) federal land managers should be congnizant of the importance of caves during their day-to-day land use decisions and take real steps to protect significant caves.

Again, I thank the Subcommittee for scheduling this hearing. I look forward to working with you on this important legislation.

Thank you.

PROTECTING AMERICA'S "UNDERGROUND WILDERNESS"

By Kristin Merriman

An empty whiskey bottle marked the gruesome sight of more than 180 crumpled bat corpses left to rot on the floor of Thornhill Cave in Kentucky. The helpless victims, who huddle together as tightly as 300 per square foot during hibernation, were apparently killed by vandals with shotguns.

Examination by state officials revealed numerous bats died from pellet wounds, while others had been crushed with boots and rocks. Worse, 66 of the bats were identified as Indiana bats, an endangered species struggling to survive into the next century. After a $500 reward was posted by the American Cave Conservation Association and Bat Conservation International, police received information leading to the arrest of four men.

Although the men could have been fined up to $20,000 per dead endangered bat, the federal court judge sentenced each to a $400 fine, plus a six-month, probated jail sentence and 40 hours of community conservation work at a local wildlife refuge.

Cave enthusiasts are continually frustrated by the myths associated with caves—caves are "dirty," harbor "bats with rabies" (less than one percent do), and are "empty holes." Cases of lax prosecution like the one in Kentucky, plus many stories of cruel, unethical behavior, highlight public ignorance of caves and their delicate resources. David Foster, director of the American Cave Conservation Association (ACCA), has been in 300 to 400 caves and says he has never seen one without obvious signs of human travel and vandalism.

Park officials report more than 10,000 formations have been broken in Carlsbad Cavern National Park in New Mexico. In 1986, professional thieves who looted Lava Cast Cave in the Deschutes National Forest in Oregon were caught after Forest Service officials set up a sting operation that netted half the stolen collection of arrowheads, beads and stone utensils. The culprits had earlier sold the other half for about $50,000.

The ACCA and the National Speleological Society (NSS), the largest caving organization in the U.S., have programs offering rewards to people providing information that leads to cave vandal convictions. Still, an "extremely small" number of abusers are actually caught, said NSS president Paul Stevens, and even fewer are actually prosecuted.

"We have to make sure the judges realize and are sensitive to the uniqueness of the cave environment and the need to protect it," he said. "We as a community need to make those in charge of prosecuting sympathetic to the value of the resources we're trying to protect."

"Cave life has a very low metabolic rate," explained Foster, director of the ACCA. "The implications of that are immense . . . Footsteps can be there forever, and anything you touch will be that way for a long time."

The ACCA, a 10-year-old national organization dedicated to the recognition and protection of caves, karsts and their natural resources, has heard countless stories of cave abuses from every section of the country. About 20 percent of America is karst, soluble rock terrains like limestone which dissolve to form sinkholes and caves. Researchers estimate that while about 39,000 caves are listed, probably double that number exist.

These "holes" are anything but empty, and, in fact, offer numerous benefits to society. The dark, humid environment houses many species of animals, fish and plant life, including bats which feed on insects such as flies and mosquitoes; provides scientific information on biological evolution; keeps communities supplied with water from underground reservoirs; and boosts local tourism. They also serve as breeding spots for mold-like bacteria used in medicines, and preserve paleontological and archaeological sites such as Indian art and fossils.

Rather than relishing and recognizing this unique resource, however, Americans have turned many caves into some of the country's most popular dumping grounds and malicious "play" sites. Harsh evidence includes littering, spray-painting cave walls, breaking formations that took hundreds of thousands of years to develop; slaughtering cave creatures, many of which are threatened or endangered; and theft by professionals who sell some of America's rarest mineral formations to foreign collectors.

But these internal activities alone are not considered the major threat to caves and their wildlife, according to cave conservationists. Often what occurs on the surface has far more negative impact on these sensitive underground ecosystems. Poor land management has permitted communities to build without thought in karst regions, often dumping their increasingly abundant toxic wastes into sinkholes. New dams have flooded caves, drowning inhabitants or diverting life-giving water to new areas. Oil drilling, mining, forestry, quarrying, road construction—their impact can be lethal to what some call "America's last frontier."

Cave researchers have tried for years to convince developers and their house-hungry

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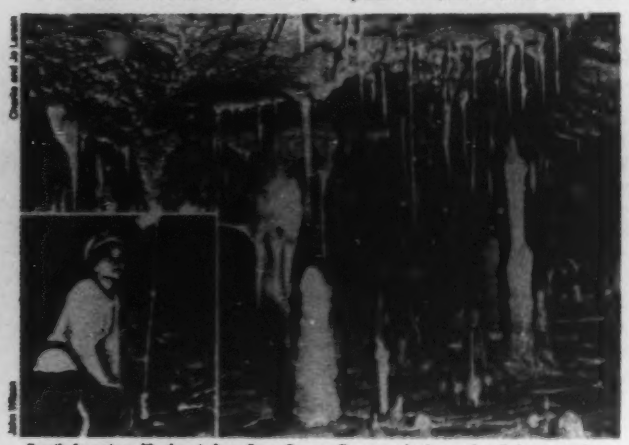


Charlie and Jo Larsen

John Wilson

Fragile formations, like these in Inner Space Caverns, Texas, can be destroyed easily by one careless owner. Inset, Mary Wilson examines a soda straw formation.

Cave Protection

(continued from page 3)

clients that just because a sinkhole is round and deep, it is not a trash can. "People look at sinkholes as places to dump waste," Foster said. "These are the worst places to put waste because they're simply mainlining it directly into the underground water systems. There are probably thousands of people in the main cave states that are drinking directly out of their sewage."

Foster speaks not only as a 14-year veteran of cave exploration, but as a resident of Horse Cave, Ky.—a leading example of what ignorance can create. In the early 1900s, Horse Cave was a thriving community. Its main tourist attraction, spectacular Hidden River Cave, brought visitors from many regions, eager to spend time gazing at the cave's odd fish and to spend money in the town itself. In 1943, the cave closed. Heavy pollution from sewage and toxic waste destroyed its once-clear waters, and now when the summer heat cooks the cave's contents, residents walk down main street with handerkerchiefs over their noses to stifle the horrible stench.

". . . probably thousands of people in the main cave states are drinking directly out of their sewage."

Currently a $10 million sewage plan for the area is in the works, but no one can say for sure what effect this will have on the cave. Officials know something must be done immediately, however; Mammoth Cave National Park, one of the 10 most visited national parks in the country, is only 20 miles away.

Tom Aley, one of a few karst hydrogeologists in the U.S., has become increasingly concerned with the issue of groundwater pollution in karst regions. "It's getting more serious in terms of the number of problem sites," he said. "In terms of the general severity, though, while the average problem is getting worse, the super bad ones are getting better. One good thing I'm seeing is there is far more public awareness and concern over what happens in the subsurface."

Aley, who serves as director of Ozark Underground Laboratories in Missouri, estimates that of all the groundwater discharged annually from wells and springs, as much as one-third has gone through a karst system.

"The majority of karst groundwater systems are safe," he said. "But the majority could be better protected so we can lessen the risk." Aley compared the situation to driving a car without much tread left on its tires. "We can drive it, and it will get us where we're going safely, but we'd better be thinking of getting new tires soon. . ."

"The dimension of the subsurface hasn't received nearly the attention of the surface. Land managers currently plan in two dimensions. They must put in a third one—down."

But shouldn't the states be the ones responding to the complex problem of cave management and protection? Some are. Nearly 20 states have some type of cave laws on the books, but they vary greatly in the scope and strength of protection they offer.

Foster described strong laws as those requiring *written* permission by owners to enter caves on private land, listing the types of protected cave features, dealing with pollution, protecting cave gates from vandalism, outlawing the sale, possession and export of cave formations; and exempting cave owners from liability. Such laws also should not demand proof of "intent to damage." Very few of the current state laws incorporate all of these points, Foster added.

What about enforcement and general understanding of cave problems? "The response at the state agency level varies," said Aley, noting that those who issue industrial discharge permits are usually the worst offenders. "Some are excellent. Others are back in the era of unenlightenment. There seems to be a slow adjustment in state agencies to current knowledge, but they don't keep abreast of it."

The caving community, unwilling to place all its confidence in state action, has convinced federal policy makers that a national policy toward cave protection and management is needed. The result, the Federal Cave Resources Protection Act of 1987, is designed to protect the approximately 4,000 caves on federal lands. Specifically, the bill requires agencies to consider caves in land management planning, imposes criminal and civil penalties for damaging federally-owned caves, and permits agencies to keep information on the location of caves confidential.

Cave enthusiasts are often reluctant to reveal cave sites for fear of public disclosure and the resulting abuses of increased cave traffic and use. The bill encourages individuals and caving groups to share these site locations with federal land planners with the understanding that only governors or scientists with special needs may be told of them.

This secrecy has proved itself a double-edged sword for cavers. "The problem they run into is that if we're not aware of that resource we aren't aware of the damage we can do to it," said Del Price, cave management coordinator for the Bureau of Land Management in Washington, D.C.

Paul and Lee Stevens

Vandals broke these formations in Indian Creek Cave in West Virginia.

He cited a national survey taken to inventory caves on BLM-managed lands. "We came up with 920 known caves, but we don't think that's valid information because some of the states' information is incomplete. Colorado told us they had no known caves. Then locals said that was ridiculous and that many exist, so we suspect this is just the tip of the iceberg."

Introduced by Reps. Frederick Boucher (D-VA), Larry Craig (R-ID) and Tim Johnson (D-SD), the Federal Cave Resources Protection Act recently passed the House on a voice vote. Its companion bill, S. 927, is still in the Senate Subcommittee on Public Lands and National Parks. Introduced by Sen. Thomas Daschle (D-SD), the bill is awaiting hearings, which the senator is trying to schedule in May or June. Cave conservationists hope passage will come quickly.

"One goal of the bill is to raise the ethical consciences of federal land managers," Stevens said. "Many don't see it as an important resource."

Price notes federal agencies have already begun incorporating caves into resource management plans. A recently completed plan for more than one million acres in Wyoming named the included karst regions "areas of critical environmental concern," which places "a big red flag" on them for special management and protection, he said. "With that act we'd have the necessary force of law behind us to do a good job of protecting caves."

"The federal act would be a benefit," said Aley. "It would focus attention on an important natural resource, although I'm not

(continued from page 4)
expecting it to be the cure-all."

Foster, of the ACCA, agrees. "The bill is needed," he said. "But what's needed more is a widespread education system to convince people caves are worth saving."

Towards that end, the ACCA is trying to raise $5 million to fund an American Cave and Karst Center, which would provide educational programs and displays on caves, groundwater and man's impact on the subsurface. The center would also assist industry and other entities in understanding and reducing karst-related problems like pollution. Foster hopes the museum will be built within five years, and will eventually draw 500,000 visitors a year to Horse Cave, Ky.

Paul Brant, an IWLA Greensboro County, W.Va., member and longtime cave conservationist, originally hoped the museum would locate in Lewisburg, W.Va., the largest karst area in the state. Now he'd like to see a museum-connected research station there. Regardless, the need for such a museum has never been in doubt, he said.

"On one hand you've got greater awareness in groups like the Izaak Walton League and the National Speleological Association," Brant said. "They're beating the drums to make people aware, but it's a losing battle. There's more people coming into karst areas than our limited resources can reach . . . We need more of an effort, whether it's professionals or volunteers. Our current effort isn't keeping up with the growth in population."

Brant, who is coordinator for the West Virginia Resource Conservation and Development Department of the Soil Conservation Service, pointed out that community growth increases pressure on natural resources. "You've got to recognize that any use is damaging to a cave," he continued. "That's true of almost any natural environment, I think . . . The more people who go in there, the more the natural system is upset. No matter how careful they are, they're degrading the natural habitat. One encouraging thing I see, however, is more and more cavers working with cave landowners, often enlisting their help to protect cave resources. One thing I like about the Ikes is they use this attitude in their hunting and fishing activities. I think there may well be a role for League chapters to help work with landowners in terms of cave conservation."

Brant's views on the importance of public education are strongly supported by the caving community. "There's no way we can protect a cave by policing it," Foster said. "What we have to do is raise the awareness of these people to get them to stop hurting caves . . . Education has to go hand in hand with laws. Our job is only just beginning."

HELICOPTER FUND ORGANIZED TO SNAG DUCK POACHERS

Buy a helicopter. Save ducks. That simple suggestion—offered in a column by Dennis Anderson, outdoor editor of the *St. Paul Pioneer-Press Dispatch*—has rocketed the issue of waterfowl poaching in Louisiana into the headlines.

The result has been phenomenal—a regional effort led by the St. Paul newspaper, former Minnesota Vikings Coach Bud Grant and the Izaak Walton League to raise the $650,000 necessary to buy a chopper for the budget-squeezed Fish and Wildlife Service. A helicopter is one of the tools agents in Louisiana say is essential to catch outdoor outlaws engaged in illegal activities like poaching, and could probably "eliminate completely" the illegal practice of waterfowl baiting.

"The message the helicopter fund will send is that there are committed conservationists everywhere, hunters and non-hunters alike, who care about our wild living resources and who are willing to work and to contribute to protect them," said Jack Lorenz, IWLA executive director. Lorenz, Anderson and Grant are custodians of the Izaak Walton League Helicopter Fund, which currently contains more than $100,000 in private and corporate donations.

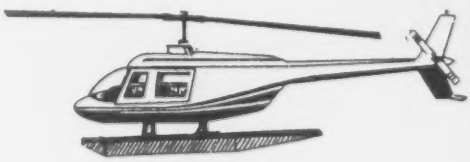
The project could not come at a better time. Stories abound of small groups killing hundreds of ducks in one day; some law enforcement agents estimate the illegal number of ducks killed is at least equivalent to the number taken legally in Louisiana. Studies that place the North American duck population at 62 million (down from 150 million in the mid-1940s) point to habitat loss as the major cause of the decline, but illegal hunting may be adding significantly to the problem.

Since Anderson's series broke, public support for the fund has grown rapidly. Fund-raising events such as waterfowl symposiums, t-shirt and hanky sales, and citizen-corporate "matching funds" programs are thriving, and several companies have offered to donate a certain percentage of their one-day sales toward the fund. But why all this furor over what some see as a problem in just one state?

"First, just look where Louisiana sits—literally at the end of the funnel where all the migrating ducks concentrate," Anderson said in a recent interview with *Outdoor News*. "Louisiana winters over half the ducks from the Central and the Mississippi Flyway. A quarter of North America's ducks winter there. Whatever happens in that state is terribly important."

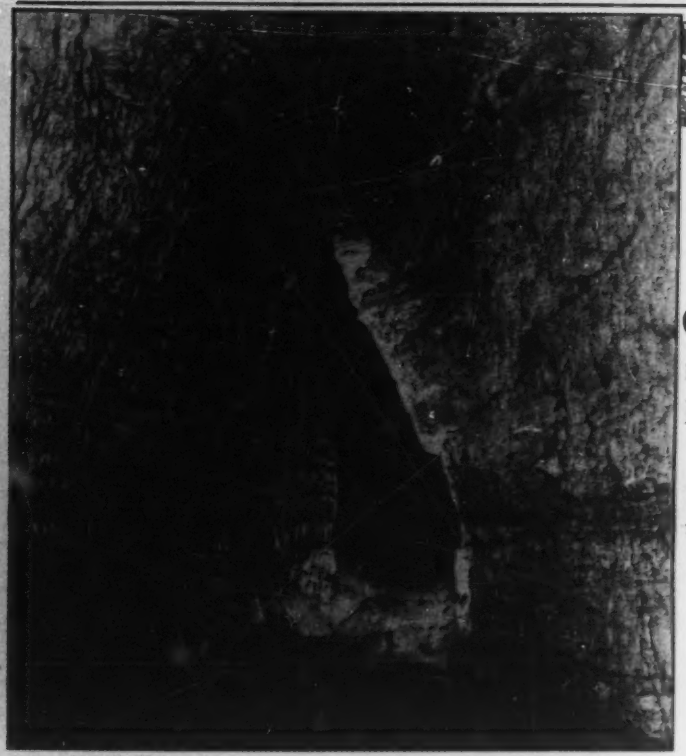
Lorenz agrees with Anderson's statement, adding, "We strongly encourage the public to write their representatives and Secretary of the Interior Donald P. Hodel, saying the Fish and Wildlife Service must be permitted to own and maintain a helicopter for waterfowl law enforcement purposes in Louisiana."

To make a contribution, send a tax-deductible check to the Izaak Walton League Helicopter Fund, Commercial State Bank, 35 W. 5th St., St. Paul, MN 55102. The ducks need your help NOW!



High Country News

December 21, 1987 Vol. 19 No. 24 A Paper for People who Care about the West One Dollar



Cottonwood Cave, New Mexico

CAVES need protection

✓See page 10

Idaho debates public land access

by Pat Ford

The East Fork Road is the primary public access to the backcountry of the White Cloud Mountains, one of Idaho's most popular wild places. But for 10 years it has been gated about 12 miles from its ending in a campground called Bowery, which is within the Sawtooth National Recreation Area.

The gatekeeper is Bob Isinger, who owns 320 acres that straddle the East Fork Road. During hunting season, when most locals use the road, he leaves the gate open. Forest Service and state fish and game personnel, miners, and the few landowners farther up can go through at all times.

Summer is different. Hikers, mountain bikers, horsepackers and tourists who use the road in growing numbers find the gate closed. Over 100,000 acres of spectacular public land is blocked by a gate on what to all appearances and on all maps is a public road.

This year, the Isinger gate became Idaho's latest example of a passionate debate common to all Western states with large amounts of public land. In a legal judgment with broad implications, Idaho's attorney general said the state has no authority to force removal of gates on public roads.

The opinion caught the Forest Service by surprise. "This is a real shocker," Leon Wells, assistant area manager for the Sawtooth National Recreation Area told the *Idaho Statesman*. "I don't understand the state's decision on this at all. We felt that state law was being violated and the state, through the county, would be able to declare the road public."

The legal opinion was triggered by the Idaho Conservation League. "In August, three of our members, independently, asked us to do something about the gate," says ICL executive director Mary Kelly. "That same month, one of our staff members, while hiking in the White Clouds, met a large church group with horses. They had run into the gate, and were still angry about having to turn around and reach their destination by a longer route."

Ever since the gate was erected, the Sawtooth recreation area has quietly urged Custer County to take action against it. But Isinger is a smart man. He lets county folks through the gate and he opens it during hunting season. Custer County's few residents aren't averse to giving the Forest Service a hard time, and the county commission sees those complaining as "outsid-

(Continued on page 10)

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Caves

Hidden, but vulnerable

by Betsy Marston

A little known bill introduced in Congress this year aims to protect what supporters say is America's last wilderness frontier: caves.

Thousands of caves underlie public land in the West, and many have never been stumbled upon, much less explored. Created some 250 million years ago, limestone and gypsum caves can harbor the remains of vanished species such as the sabre tooth tiger, the giant Dire wolf or cave bear, preserved in flow rock.

Mysterious and silent, caves are also home to endangered species -- some of them blind -- and cavern walls can be found decorated with incised or painted pictures showing Indian hunts of long-extinct animals.

Caves are fragile and easily polluted. That is why the American Cave Conservation Association, American Speleological Society, several federal land managers and a bipartisan group in Congress support a bill called the Federal Cave Resources Protection Act of 1987.

Bureau of Land Management staffer Buzz Hummel worked on the first draft of the bill when he was based in New Mexico, close to Carlsbad Caverns. Because caves are protected now only by reference to other laws, he says, the estimated 1500 caves in his Roswell, N.M., district are vulnerable to vandalism or inappropriate development.

"We have nebulous, grey areas in the law," says Hummel. "If a local rock hound group came and asked for the best place to hunt rocks, we had to tell them."

Secrecy is built into the proposed cave protection bill. Excluding the Park Service and Indian lands, the bill allows the Forest Service or BLM to withhold "the nature or location" of a federal cave. Exceptions are requests from a governor of the state in which the cave is located or a bona fide research institution.

Confidentiality is vitally important, says Jer Thornton, an American Cave Conservation Association member who worked for years on the bill.

"Cavers know where the resource is but often won't tell a federal agency for fear of vandalism." People can do a lot of damage with spray paint, adds Hummel.

The reluctance of cave enthusiasts to share information puts land managers in a bind. If managers know where a cavern is, presumably they can act to protect it. At the same time, current law requires disclosing cave locations to rock collectors or sellers who may damage the resource.

Hummel says in New Mexico, the BLM's ignorance about the location of caves could lead to bad land use decisions.

"Oil and gas drilling is in the area. A road could be built on top of a cave, with the result that an oil rig drops down into it," he says.

The proposed bill does allow people the right to apply for a permit to "collect or remove any natural resource from caves located on federal lands." The permit would include a bond or cash deposit. The bill also prohibits removing rocks without a permit or killing living creatures in a cave.

The casual destruction that occurs where cave visitors snap off speleothems -- mineral formations such as stalactites that stud the ceiling -- must be stopped, says Del Price, BLM cave specialist in Washington, D.C. It will take millions of years to replace structures like that, he adds, and then only if the same moist conditions exist that created them in the first place.

As well as protecting caves, supporters say a major task is public education. Towards that end, the cave protection association is working to raise $5 million to establish a national cave center in Horse Cave, Kentucky.

For more information, write David Foster, executive director, ACCA, Box 409, Horse Cave, KY 42749.

For the latest information on the cave protection bill, call Laura Gerke, legislative assistant to Rep. Ross Boucher, D-Va., a sponsor of H.R. 1975 earlier this year along with Larry Craig, R-Idaho, and Tim Johnson, D-S.D. A total of 25 representatives now co-sponsor the bill.

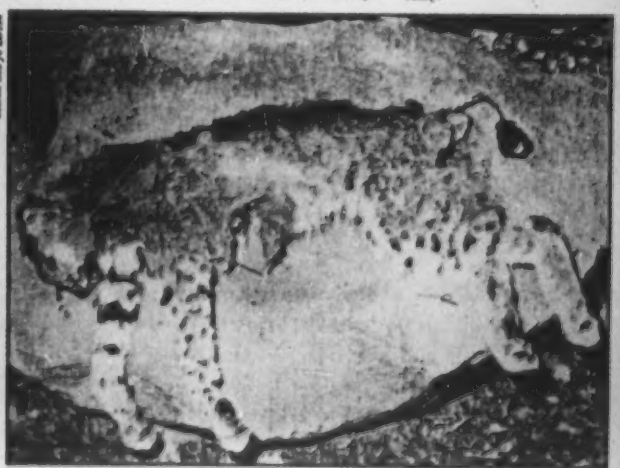
In the Senate, sponsors are Sen. Thomas Daschle, D-S.D., along with co-sponsors Larry Pressler, R-S.D., John Heinz, R-Pa., and Kit Bond, R-Mo. Gerke says the House interior subcommittee is expected to report the bill out to the full interior committee by late February.

Charles and Jo Larson

Dogtooth spar and speleothems

Charles and Jo Larson

Ape Cave, Washington



Desiccated bobcat found in Owyhee River Cave, Oregon

Working for the Nature of Tomorrow

NATIONAL WILDLIFE FEDERATION, 1412 Sixteenth Street, N.W., Washington, D.C. 20036-2266 (202) 797-6800

Office of the President

MAY 08

May 6, 1987

Senator Tom Daschle
United States Senate
Washington, D.C. 20510

Dear Senator Daschle:

The National Wildlife Federation (NWF), the nation's largest conservation organization, commends you for introducing S. 927, the Federal Cave Resources Protection Act. This legislation will lend needed protection to these unique and fragile Federal resources.

The Federation recognizes the value of caves on the Federal lands as vital wildlife habitat for many rare and interesting species. We also realize their importance as recreation resources, archaelogical sites, and underground reservoirs.

NWF also notes the unfortunately high degree of vandalism in many of the caves on Federal lands. Cave ecosystems are delicately balanced and unusually susceptible to disturbance. Despite this fact, there is no Federal law that specifically protects cave resources. Faced with increasing deterioration of cave ecosystems, there is a need for specific legislation such as that which you introduced.

NWF applauds your efforts to remedy this situation by introducing S. 927. As your bill moves through the legislative process, we recommend you include several strengthening provisions. Specifically, we recommend that section 2(c) from the House measure (H.R. 1975) be added. This section affirms that "it is the policy of the United States that cave resources be managed in a manner that will protect and maintain such resources for present and future public use."

We also recommend that the measure be amended to eliminate the exclusion of caves located on National Wildlife Refuges. Apparently, the U.S. Fish and Wildlife Service felt that the Endangered Species Act provided its staff with sufficient guidelines for careful management of cave habitat, and thus asked that units of the National Wildlife Refuge System be exempted. We disagree with this exemption for several reasons. First, not all caves on Refuge lands have endangered species, but these caves may contain species which require proper management. Second, endangered species, where present, may not be year-round residents. And third, other cave resources besides fish and wildlife should be protected.

With these amendments, S. 927 will provide needed protection to an important public resource. The National Wildlife Federation looks forward to working with you for its quick passage.

Sincerely,

Jay D. Hair

JAY D. HAIR

JDM:da:rw

National Audubon Society

NATIONAL CAPITAL OFFICE 801 PENNSYLVANIA AVENUE, S.E. WASHINGTON, D.C. 20003 (202) 547-9009

RECEIVED MAY 2 6 1987

May 20, 1987

Senator Tom Daschle
Senate Office Building
Washington, DC 20510

Dear Senator Daschle:

On behalf of the National Audubon Society, I want to thank you for sponsoring the Federal Cave Resources Protection Act (S. 927), and let you know of the strong support of the National Audubon Society for this important conservation legislation.

Of all the environmental resources of this country, unfortunately, cave ecosystems are the least known, and in many ways, the most threatened. From a wildlife perspective, we do know that caves are home to a rich variety of species -- many of which are not to be found anywhere else. Many experts further believe that numerous as-yet-undiscovered species of wildlife are also thought to find their homes in caves. There is much we do not yet know about cave ecosystems, but we believe that their importance for scientific study and their value as a gene pool has not been adequately recognized.

In addition to all this, of course, caves are an important conduit for underground rivers which serve as sources of water for many rural communities, and are very important from a recreational standpoint.

Your legislation will rectify the unfortunate situation which now exists, namely that there is no federal law that specifically protects these resources. Because of this fact, and because of varying interpretations of other laws by federal agencies, management of caves on federal lands is quite often not adequate. Too often, vandals have desecrated beautiful and important caves with graffiti, litter, or outright destruction.

Your measure would direct the Secretaries of Agriculture and Interior to include cave resources in land management plans, authorize them to withhold information about the nature and location of caves which are at risk, and empower the Secretaries to take strong actions to protect them.

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We urge you to proceed in your efforts to secure hearings and co-sponsors for this important legislation, and will help all we can. We are not yet certain whether we favor the exemption for the National Wildlife Refuge System found in Section 6, and will wait until the final hearings to take a definitive position on that. We can understand the arguments on both sides, but our main aim is to guarantee protection of the important cave resource.

We would further urge you to amend S. 927 to include the statement of policy which is now found in the House bill and reads as follows: "It is the policy of the United States that cave resources be managed in a manner that will protect and maintain such resources for present and future public use." We believe it is important to clearly set forth such a statement for the direction of the agencies affected.

Thank you for taking a strong stand for this important but too often ignored federal resource.

Sincerely,

Brock Evans
Vice President for
National Issues

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Senator FOWLER. Thank you, Tom, very much, also for your leadership in overall efforts at conservation throughout the country. And we will give immediate attention to the Cave Protection Act.

Senator DASCHLE. Thank you.

Senator FOWLER. Thank you for your testimony.

Mr. Allen, welcome. We are about to vote here in a minute, but let's see if we can go for five or six or seven minutes.

STATEMENT OF TOM ALLEN, ASSISTANT DIRECTOR, MANAGEMENT SERVICES, BUREAU OF LAND MANAGEMENT, DEPARTMENT OF THE INTERIOR

Mr. ALLEN. Thank you, Mr. Chairman. I'm here to discuss the position of the Department of the Interior on S. 927 and H.R. 1975, the cave protection bills.

It is established policy of the Bureau of Land Management to manage and protect cave resources on public lands in a manner that will maintain their unique resource values for the use of the public both now and in the future. We work closely with individuals and caving organizations on cave management projects through cooperative agreements, and we promote an awareness among users and managers of caves on public lands by developing informational and educational materials on conservation methods and potential hazards.

We endorse the concept of S. 927, but we oppose enactment of the bill unless it is amended to overcome several problems that we believe it raises. We recognize caves as fragile and unique nonrenewable resources that require special protection and management. S. 927, however, would unnecessarily impede efficient land management.

Senator FOWLER. Why is that?

Mr. ALLEN. It creates problems, sir, with some definitions and several other provisions in the bill which we think could be amended. We could work with the committee to bring about those changes.

Senator FOWLER. We would be delighted to have your suggestions on specific language that should be considered and amendments. And I hope you would submit that.

Mr. ALLEN. Yes, sir, we will.

There are two provisions of S. 927 which would be very helpful to the BLM. One is a specific authority provided in section 5 to land managing agencies to control sensitive cave information, even in the face of Freedom of Information Act requests. This protection of sensitive resource information is analogous to the protection presently provided by other laws for endangered species and archaeological resource information.

The provision in section 7 which provides for civil and criminal penalties for those who intentionally damage or remove cave resources is also very important and would be helpful in our efforts to eliminate vandalism and illegal destruction of cave resources.

We believe that much of the remainder of the bill may be unnecessary since authorities already exist to accomplish the same objectives. For example, BLM already manages cave resources in a multiple-use context under the Federal Land Policy and Management

Act and other authorities, such as the Endangered Species Act, Historic Preservation Act, Antiquities Act, Archaeological Resources Protection Act and title 18 of the U.S. Code.

Senator FOWLER. How much of your budget is dedicated to that cave resource management?

Mr. ALLEN. I estimate that we have about $300,000 going into cave resource protection, sir.

Senator FOWLER. Nationally.

Mr. ALLEN. That's correct, sir. That is focused in the western States where we have the majority of the land that we manage—both surface and subsurface.

Caves have been considered in our land use planning process for many years and will be considered in all future plans.

We must, consequently, oppose S. 927 unless it is amended in several respects.

First, the definition of "Federal cave resource" should be amended to make it clear that Federal agencies need not necessarily be responsible for managing cave resources located in split-estate lands where the surface is in private or other non-Federal ownership but where the subsurface or mineral rights have been reserved or partially reserved by the United States. As the bill is now drafted, it appears that BLM would be required to obtain access and to manage such caves, many of which might be totally separated from other public land management responsibilities.

In addition, the definition of Federal cave resource should incorporate the concept of significance so that the land managing agencies would not be given the overwhelming burden of intensively managing and regulating access to hundreds of caves that may be of little scientific or recreational interest. Whether a particular cave is a significant resource should be determined during the inventory and/or land use planning process.

To avoid conflict among land uses, it is essential that a savings provision similar to that in the Archaeological Resources Protection Act be added to the bill to provide that nothing in S. 927 shall be construed to repeal, modify or impose additional restrictions on the activities permitted under existing laws and regulations and authorities relating to other multiple-uses of the Federal lands.

To emphasize that caves are to be considered among the various multiple uses in the land management planning process, we believe that the phrase necessary for the management in section 4(c) of the bill should be amended to read "necessary for the multiple-use management." This would allow recognition of the fact that it is in the public interest to manage the cave resource in concert with other multiple-use objectives and authorities.

Section 6 exempts units within the National Park System and the National Wildlife Refuge System from the section's collection and removal requirements. It would be appropriate to remove units of those systems from all provisions of the bill particularly section 5 which requires land managers to supply information concerning the location of cave resources in section 7 as it relates to the [fish and] National Wildlife Refuge System.

In section 7 it would be helpful to make a distinction between willful and knowing destruction and inadvertent or accidental destruction which might occur in the normal course of authorized

multiple use of the public lands. The provisions regarding killing of cave life also appear to be overly restrictive.

We also feel that the provision in section 9(b) for the allocation of permit fees and penalties should be amended. We believe any funds collected should be deposited in a General Treasury as are most receipts of this sort.

Finally, we concur with the Department of Agriculture that section 10 should be amended to remove the requirement that the Secretaries of Agriculture and Interior issue joint regulations and to permit rather than require each agency to promulgate regulations if necessary. The Forest Service and the Bureau of Land Management, while not opposed to the joint regulations, operate under somewhat different laws and regulations. If additional regulations are found to be necessary, each agency should have the option to develop its own regulations. The regulations would be coordinated for as much consistency as possible.

H.R. 1975 is similar to S. 927. As passed by the House, H.R. 1975 was amended to incorporate two of the provisions which we recommended. It provides for penalties for those who knowingly disturb or destroy cave resources on Federal lands or knowingly interfere with cave life on Federal lands and requires the Secretaries of Agriculture and Interior each to issue regulations to carry out the act rather than to issue joint regulations.

The other recommendations for amendment that we made were not adopted. If S. 927 is reported out by this committee, we recommend that it be amended to include the recommended provisions adopted in the House-passed version of H.R. 1975, as well as provisions addressing the other concerns that I have discussed. Should H.R. 1975 be reported out, we also recommend that it be amended to address the concerns I have discussed. We would be happy to work with the committee to develop the necessary amendments.

This concludes my statement.

[The prepared statement of Mr. Allen follows:]

JUN 16 1988

STATEMENT OF TOM ALLEN, ASSISTANT DIRECTOR, MANAGEMENT SERVICES, BUREAU OF LAND MANAGEMENT, DEPARTMENT OF THE INTERIOR, BEFORE THE SUBCOMMITTEE ON PUBLIC LANDS, NATIONAL PARKS, AND FORESTRY, COMMITTEE ON ENERGY AND NATURAL RESOURCES, UNITED STATES SENATE, ON S. 927, A BILL "TO PROTECT CAVE RESOURCES ON FEDERAL LANDS, AND FOR OTHER PURPOSES," AND H.R. 1975, AN ACT "TO PROTECT CAVE RESOURCES ON FEDERAL LANDS, AND FOR OTHER PURPOSES,"

I appreciate the opportunity to appear here today to discuss the position of the Department of the Interior on S. 927 and H.R. 1975.

It is the established policy of the Bureau of Land Management to manage and protect cave resources on public lands in a manner that will maintain their unique resource values for the use of the public, both now and in the future. We work closely with individuals and caving organizations on cave management projects through cooperative agreements, and we promote an awareness among users and managers of caves on public lands by developing informational and educational materials on conservation methods and potential hazards.

We endorse the concept of S. 927, but we oppose enactment of the bill unless it is amended to overcome several problems that we believe it raises. We recognize caves as fragile and unique nonrenewable resources that require special protection and management. S. 927, however, would unnecessarily impede efficient land management.

S. 927 would be cited as the "Federal Cave Resources Protection Act of 1987". Section 2 of the bill states that its purposes are to protect such resources on Federal lands for the benefit of all people, and to encourage cooperation and exchange of information between government agencies and those who use such resources for research, education or recreation. Section 3 of the bill

defines "cave" to include any natural void, cavity, recess, or system of interconnected passages underground or within a cliff or ledge that is large enough for a person to enter. It defines "Federal lands" to include lands, including subsurface rights, owned by the United States and administered by either the Secretary of Agriculture or of the Interior, except for Indian trust lands.

Section 4 of the bill would authorize the Secretary of the department managing the land containing a cave to act to protect the cave resources, by regulating or restricting use, entering into volunteer management agreements with scientists or spelunkers, and appointing advisory committees. It would direct that caves be considered in land management planning and that cooperation and communication be fostered among land managers, users of cave resources, and the public. This section would also permit the Secretary to authorize disturbance of cave resources where such disturbance is necessary for the management or interpretation of a Federal cave resource.

Section 5 of S. 927 would prohibit release of information about the nature or location of Federal cave resources under the Freedom of Information Act unless the appropriate Secretary determines that disclosure would aid cave resource protection without creating substantial risk of harm, theft, or destruction of the resources. The bill would include exceptions to this prohibition under certain circumstances upon written request by the Governor of the State or a bona fide research institution.

Section 6 would provide for a permit to collect or remove cave resources. Permittees would be required to post a bond or cash deposit to ensure compliance with the requirements of the bill and offset potential damage.

Such a permit could be revoked by the Secretary upon violation of any condition of the permit or upon commission of any act prohibited by the bill. Section 6 would not apply to cave resources administered by the National Park Service or located within any unit of the National Wildlife Refuge System.

Section 7 of the bill would establish criminal penalties of a maximum of one year imprisonment or a fine under title 18, United States Code, or both, for a first offense, or three years imprisonment or a fine, or both, for subsequent violations. Under section 8 civil penalties might be assessed under regulations promulgated pursuant to the Act.

Section 9 of the bill would authorize appropriations sufficient to carry out the purposes of the Act, and would direct that permit fees, bond forfeitures, and penalties be placed in a special Treasury fund and used to manage, benefit, repair, or restore the particular cave resource affected or damaged. Section 10 of S. 927 would require the Secretaries of Agriculture and the Interior to issue joint regulations to implement the bill.

Two provisions of S. 927 would be very helpful to the Bureau of Land Management. One is the specific authority provided in section 5 to land managing agencies to control sensitive cave information, even in the face of Freedom of Information Act requests. This protection of sensitive resource information is analogous to the protection presently provided by other laws for endangered species and archaeological resource information. The provision in section 7 which provides for civil and criminal penalties for those who intentionally damage or remove cave resources is also very important and would be helpful in our efforts to eliminate cave vandalism and illegal destruction of cave resources.

We believe that much of the remainder of the the bill may be unnecessary since authorities already exist to accomplish the same objectives. For example, BLM already manages cave resources in a multiple use context under the Federal Land Policy and Management Act and other authorities, such as the Endangered Species Act, the National Historic Preservation Act, the Antiquities Act, the Archeological Resources Protection Act, and title 18 of the U.S. Code. Caves are a resource that has been considered in our land use planning process for many years, and will of course be considered in all future plans.

We consequently oppose S. 927 unless it is amended in several respects.

First, the definition of "Federal cave resource" should be amended to make it clear that Federal agencies need not necessarily be responsible for managing cave resources located in "split-estate" lands where the surface is in private or other non-Federal ownership but where subsurface or mineral rights have been reserved or partially reserved by the United States. As the bill is now drafted, it appears that BLM could be required to obtain access to and manage such caves, many of which might be totally separated from other public land management responsibilities. In addition, the definition of Federal cave resource should incorporate the concept of significance, so that the land managing agencies would not be given the overwhelming burden of intensively managing, and regulating access to, hundreds of caves that may be of little scientific or recreational interest. Whether a particular cave is a significant resource should be determined during the inventory and/or land use planning process.

To avoid conflict among land uses, it is essential that a savings provision similar to that in the Archaeological Resources Protection Act be added to the bill to provide that nothing in S. 927 shall be construed to repeal, modify, or impose additional restrictions on the activities permitted under existing laws and authorities relating to other multiple uses of the Federal lands.

To emphasize that caves are to be considered among the various multiple uses in the land management planning process, we believe that the phrase "necessary for the management" in section 4(c) of the bill should be amended to read "necessary for the multiple use management...". This would allow recognition of the fact that it is in the public interest to manage the cave resource in concert with other multiple use objectives and authorities.

These changes in section 4 are important to enable land managing agencies to manage caves and cave resources in a multiple use context, to balance conflicting resource values taking into consideration public input expressed during the planning process, and to protect rights and privileges already recognized by law. In particular, they would address the potential conflicts between mining, mineral leasing, mineral material sales, and the occurrence of caves.

Section 6 exempts units within the National Park System and the National Wildlife Refuge System from the section's collection and removal requirements. It would be appropriate to remove units of those systems from all provisions of the bill, particularly section 5 which requires land managers to supply information concerning the location of cave resources and section 7 as it relates to the Fish and Wildlife Refuge System.

In section 7 it would be helpful to make a distinction between "willful and knowing" destruction and inadvertent or accidental destruction which might occur in the normal course of authorized multiple use of the public lands. The provision regarding killing of cave life also appears to be overly restrictive.

We also feel that the provision in section 9(b) for the allocation of permit fees and penalties should be amended. We believe any funds collected should be deposited in the General Treasury as are most receipts of this sort. Funds for managing cave resources can be appropriated under current authorities or the authority provided by section 9(a) of S. 972. The provisions of this section are so restrictive that they might be counterproductive.

Finally, we concur with the Department of Agriculture that section 10 should be amended to remove the requirement that the Secretaries of Agriculture and the Interior issue joint regulations, and to permit, rather than require, each agency to promulgate regulations, if necessary. The Forest Service and the Bureau of Land Management, while not opposed to joint regulations, operate under somewhat different laws and regulations. If additional regulations are found to be necessary, each agency should have the option to develop its own regulations if it appears appropriate. The regulations would be coordinated for as much consistency as possible.

H.R. 1975 is similar to S. 927. As passed by the House, H.R. 1975 was amended to incorporate two of the provisions which we recommended. It provides penalties for those who "knowingly" disturb or destroy cave resources on

Federal lands or "knowingly" interfere with cave life on Federal lands, and requires the Secretaries of Agriculture and Interior each to issue regulations to carry out the Act rather than to issue joint regulations. The other recommendations for amendment that we made were not adopted.

If S. 972 is reported out by this Committee, we recommend that it be amended to include the recommended provisions adopted in the House-passed version of H.R. 1975, as well provisions addressing the other concerns that I have discussed. Should H.R. 1975 be reported out, we also recommend that it be amended to address the concerns that I have discussed. We would be happy to work with the committee staff to develop the necessary amendments.

This concludes my statement. I will be pleased to answer questions.

Senator FOWLER. Mr. Allen, I want to thank you sincerely for the specificity of your testimony and your recommendations to improve the legislation.

We will have some additional questions to submit for the record, and we would like to work with you in improving the legislation so that we can have the Bureau of Land Management's enthusiastic endorsement.

Mr. ALLEN. Thank you. We'll be happy to supply those answers and provide staff to work with the committee.

Senator FOWLER. Thank you very much.

I've got to go vote. I'll be back as soon as I can and hear from Mr. Galvin and others.

[Recess.]

Senator FOWLER. We will resume our hearing.

Mr. Galvin, we will hear from you in just a second, and you can stay there. We don't want you tc run away. We are glad you were able to join us and appreciate you letting us know you would be a little late.

We welcome the distinguished Senator from California, Senator Pete Wilson, for any remarks and proceed as you will, Senator Wilson.

STATEMENT OF HON. PETE WILSON, U.S. SENATOR FROM CALIFORNIA

Senator WILSON. Thank you very much, Mr. Chairman. I'm very grateful for this opportunity and I thank the witness for his courtesy.

I'm here today to share with you my views on H.R. 1173, the so-called dams in the parks bill. As you know, I have long been a supporter of measures which have as their aim the preservation of our environment and precious natural resources. So, I am pleased to lend my support to yet another bill that furthers the laudable goal of conservation.

According to the Congressional Research Service, there are currently 108 dams existing within the boundaries of 18 of our Nation's 48 national parks. Thirteen of these structures can be found in four of the six national parks in California.

Certainly the most controversial of these structures in my state is the O'Shaughnessy Dam and Hetch Hetchy Reservoir which is owned and operated by the City of San Francisco and located in Yosemite National Park.

I am here today to state that I am opposed to any suggestion that the O'Shaughnessy Dam or any other dam in a national park should be enlarged. We must remain mindful of the purposes for which Yosemite Park was set aside and not support any proposal that will further infringe on the beauty and bounty of this world famous park.

The bill before this subcommittee today helps to preserve our precious national parks by doing two things. First, it prohibits any new dam construction within the boundary of a national park or monument or the construction of any dam project that would inundate such lands. And second, it prohibits the use of any Federal land for the purpose of expanding the capacity of any reservoir

within the boundaries of Yosemite National Park. This latter provision is intended to expressly address the Hetch Hetchy Reservoir issue.

What initially gave rise to the need for this legislation was the 1981 study conducted by the City and County of San Francisco. The study recommended that the O'Shaughnessy Dam be raised by 50 feet. Were the dam to be so modified, it would have the undesirable effect of flooding an additional 500 acres of Yosemite National Park.

I believe that such construction is unnecessary and not in the best interests of the national park. It would result in the loss of land that has been deliberately set aside for now and for future generations.

The subcommittee will be interested to know that the City of San Francisco under the direction of former mayor Dianne Feinstein has dropped its long-standing opposition to this legislation. Representatives of the city's Public Utilities Commission have been quoted in the press as stating that the expansion of Hetch Hetchy Reservoir is not necessary because San Francisco and surrounding communities already have a sufficient long-term supply of water. The PUC's only real concern these days is whether Congress will order the reservoir to be dismantled, not whether they will be allowed to expand the project.

So, in the interest of providing additional protection to our precious national parks, I hope that the committee can join me and Senator Cranston and others in supporting this legislation. We need the kinds of safeguards provided by this bill in order to be assured that our national parks will be as special for future generations as they have been for us.

Thank you again for the opportunity to come before the committee today and express my support for this important measure.

[The prepared statement of Senator Wilson follows:]

TESTIMONY BY SENATOR PETE WILSON
BEFORE THE SENATE ENERGY AND NATURAL RESOURCES COMMITTEE
SUBCOMMITTEE ON PUBLIC LANDS, NATIONAL PARKS AND FORESTS
MAY 10, 1988

MR. CHAIRMAN, I APPRECIATE THE OPPORTUNITY TO SHARE WITH YOU MY VIEWS ON HR 1173, THE SO-CALLED "DAMS IN THE PARKS" BILL. AS YOU KNOW, I HAVE LONG BEEN A SUPPORTER OF MEASURES WHICH HAVE AS THEIR AIM THE PRESERVATION OF OUR ENVIRONMENT AND PRECIOUS NATURAL RESOURCES, AND I AM PLEASED TO LEND MY SUPPORT TO YET ANOTHER BILL THAT FURTHERS THIS LAUDABLE GOAL OF CONSERVATION.

ACCORDING TO THE CONGRESSIONAL RESEARCH SERVICE, THERE ARE CURRENTLY 108 DAMS EXISTING WITHIN THE BOUNDARIES OF EIGHTEEN OF OUR NATION'S 48 NATIONAL PARKS. THIRTEEN OF THESE STRUCTURES CAN BE FOUND IN FOUR OF THE SIX NATIONAL PARKS IN CALIFORNIA.

CERTAINLY THE MOST CONTROVERSIAL OF THESE STRUCTURES IN MY STATE IS THE O'SHAUNESSEY DAM AND HETCHY HETCHY RESERVOIR WHICH IS OWNED AND OPERATED BY THE CITY OF SAN FRANCISCO AND LOCATED IN YOSEMITE NATIONAL PARK. AS THE COMMITTEE PROBABLY KNOWS, HETCH HETCHY HAS BEEN IN THE NEWS LATELY FOLLOWING SECRETARY HODEL'S ANNOUNCED INTEREST IN DISMANTLING THIS PROJECT FOR THE PURPOSE OF RECLAIMING THE ONCE PRISTINE HETCH HETCHY VALLEY.

I HAVE SPOKEN OUT ON PREVIOUS OCCASSIONS AGAINST SECRETARY HODEL'S HETCH HETCHY PROPOSAL, AND AM PLEASED TO REPORT THAT IT NOW APPEARS TO HAVE DIED A QUIET, BUT DESERVED DEATH.

HAVING SUCCESSFULLY FOUGHT THE PROPOSAL TO DISMANTLE THIS DAM, I WANT TO STATE WITH EQUAL VIGOR THAT I AM OPPOSED TO ANY SUGGESTION THAT THE O'SHAUNESSEY DAM -- OR ANY OTHER DAM IN A NATIONAL PARK -- SHOULD BE ENLARGED. WHILE IT MAKES LITTLE SENSE TO DISMANTLE A WATER RESOURCE PROJECT OF THIS MAGNITUDE, WE MUST REMAIN MINDFUL OF THE PURPOSES FOR WHICH YOSEMITE PARK WAS SET ASIDE AND NOT SUPPORT ANY PROPOSAL THAT WILL FURTHER INFRINGE ON THE BEAUTY AND BOUNTY OF THIS WORLD FAMOUS PARK.

THE BILL BEFORE THIS SUBCOMMITTEE TODAY HELPS TO PRESERVE OUR PRECIOUS NATIONAL PARKS BY DOING TWO THINGS. FIRST, IT PROHIBITS ANY NEW DAM CONSTRUCTION WITHIN THE BOUNDARY OF A NATIONAL PARK OR MONUMENT OR THE CONSTRUCTION OF ANY DAM PROJECT THAT WOULD INUNDATE SUCH LANDS. SECOND, IT PROHIBITS THE USE OF ANY FEDERAL LAND FOR THE PURPOSE OF EXPANDING THE CAPACITY OF ANY RESERVOIR WITHIN THE BOUNDARIES OF YOSEMITE NATIONAL PARK. THIS LATTER PROVISION IS INTENDED TO EXPRESSLY ADDRESS THE HETCH HETCHY RESERVOIR ISSUE.

WHAT INITIALLY GAVE RISE TO THE NEED FOR THIS LEGISLATION WAS A 1981 STUDY CONDUCTED BY THE CITY AND COUNTY OF SAN FRANCISCO. THIS STUDY RECOMMENDED THAT THE O'SHAUGHNESSY DAM BE RAISED BY FIFTY FEET. WERE THE DAM TO BE SO MODIFIED, IT WOULD HAVE THE UNDESIRABLE EFFECT OF FLOODING AN ADDITIONAL 500 ACRES OF YOSEMITE NATIONAL PARK.

I BELIEVE THAT SUCH CONSTRUCTION IS UNNECESSARY AND NOT IN THE BEST INTERESTS OF THE NATIONAL PARK. IT WOULD RESULT IN THE LOSS OF LAND THAT HAS BEEN DELIBERATELY SET ASIDE AND PRESERVED FOR NOW AND FUTURE GENERATIONS.

THE SUBCOMMITTEE WILL BE INTERESTED TO KNOW THAT THE CITY OF SAN FRANCISCO, UNDER THE DIRECTION OF FORMER MAYOR DIANNE FEINSTEIN, HAS DROPPED ITS LONG-STANDING OPPOSITION TO THIS LEGISLATION. REPRESENTATIVES OF THE CITY'S PUBLIC UTILITIES COMMISSION HAVE BEEN QUOTED IN THE PRESS AS STATING THAT THE EXPANSION OF THE HETCH HETCHY RESERVOIR IS NOT NECESSARY BECAUSE SAN FRANCISCO AND SURROUNDING COMMUNITIES ALREADY HAVE A SUFFICIENT LONG-TERM SUPPLY OF WATER. THE PUC'S ONLY REAL CONCERN THESE DAYS IS WHETHER SECRETARY HODEL WILL SUCCEED IN HIS CRUSADE TO DISMANTLE THE RESERVOIR -- NOT WHETHER OR NOT THEY WILL BE ALLOWED TO EXPAND THE PROJECT.

IN THE INTERESTS OF PROVIDING ADDITIONAL PROTECTION TO OUR PRECIOUS NATIONAL PARKS, I HOPE THAT THE COMMITTEE CAN JOIN ME, SENATOR CRANSTON AND OTHERS IN SUPPORTING THIS LEGISLATION. WE NEED THE KINDS OF SAFEGUARDS PROVIDED BY THIS BILL IN ORDER TO BE ASSURED THAT OUR NATIONAL PARKS WILL BE AS SPECIAL FOR OUR FUTURE GENERATIONS AS THEY ARE FOR US TODAY.

THANK YOU AGAIN FOR GIVING ME THE OPPORTUNITY TO COME BEFORE THE COMMITTEE TODAY TO EXPRESS MY SUPPORT FOR THIS IMPORTANT MEASURE.

Senator FOWLER. Senator Wilson, we thank you for your leadership in this legislation and in the conservation activities on behalf of our national park system. As you know, your bill passed without dissent in the House of Representatives, and this is the beginning of our process in the Senate. Thank you for being with us.

We are pleased to have the Senator from Alaska, Mr. Murkowski, with us. Frank, any comments?

Senator MURKOWSKI. Thank you very much, Mr. Chairman.

I just wonder if the Senator from California is aware. I assume there is no opposition to this of any consequence, is there?

Senator WILSON. I am not aware of any at the present time. As I say, this arose with a study conducted for the City of San Francisco. The city has dropped all thought of expansion. They don't think it necessary and recognize the undesirability of flooding 500 acres of Yosemite.

Senator MURKOWSKI. I thank the Senator from California and I thank the Chair.

Senator FOWLER. Thank you.

Senator WILSON. Thank you, Mr. Chairman.

Senator FOWLER. Last but not least on our first list is the Deputy Director of the National Park Service, Mr. Denis P. Galvin. We welcome, Mr. Galvin.

STATEMENT OF DENIS P. GALVIN, DEPUTY DIRECTOR, NATIONAL PARK SERVICE, DEPARTMENT OF THE INTERIOR

Mr. GALVIN. Thank you, Mr. Chairman. I have a prepared statement I will submit for the record, and I'll simply summarize it.

Senator FOWLER. Thank you.

Mr. GALVIN. We support the purpose of H.R. 1173 and recommend that it be amended to require that new dams within any unit of the National Park System, not just national parks and monuments, must be authorized by Congress.

Section 1 of the bill prohibits the construction of any new dam or other new impoundment within the external boundaries of a national park or monument and goes on to prohibit other structures that would inundate lands within the external boundaries of national parks or monuments.

Section 2 prohibits the expansion of the capacity of any reservoir in Yosemite National Park absent specific congressional action.

In principle, Mr. Chairman, we support the purpose of this legislation. Its goal to restrict new dams and impoundments within park or monument boundaries is laudable. Recently we have taken steps to remove three dams within Rocky Mountain National Park, and we are currently considering the idea of restoring an impounded valley in Yosemite National Park.

Our problem with H.R. 1173 is that it restricts new dams and impoundments only in parks and monuments rather than within all units of the National Park System. By using this language, other areas might not be subject to the bill's prohibition against dams and impoundments. Specifically the protection of park resources intended by the bill would be limited to 49 parks and 78 national monuments, but would provide no protection to the other 212 units of the National Park System.

If H.R. 1173 were to be enacted by the Senate, these 212 units could, in fact, lose the protection that the Department of the Interior believes is currently provided by the existing restrictions in the Federal Power Act from the Federal Energy Regulatory Commission licensing authority. Currently our solicitors believe that the Federal Energy Regulatory Commission does not have the authority to license projects within any unit of the National Park System under that Act.

Therefore, we recommend that the bill be amended to apply to all units of the system. I have attached our suggested amendatory language to this statement. The effect of such language on the Bureau of Reclamation has caused some concern. We believe this is unfounded since new dams or impoundments in areas that involve the Bureau of Reclamation already require congressional approval.

We recognize that it is ultimately for the Congress to decide. Our purpose is to ensure that your deliberations on this section of the bill are based on a full understanding of its effects.

Section 2 prohibits use of Federal funds for the expansion of capacity of any reservoir in Yosemite National Park. It would specifically affect the Hetch Hetchy Reservoir used to supply water to the City of San Francisco. We do not believe that such a provision is necessary. The Administration will not permit raising the level of O'Shaughnessy Dam in Yosemite. Again, our solicitors believe that the City of San Francisco does not have authority to raise that dam without seeking additional congressional approval. However, as a policy matter, the Department has never intended and will not allow such an action.

While we support the goals of this bill, Mr. Chairman, we believe that it may be construed to remove protection from certain park lands which would be in contradiction to the goals of the bill. I urge that our amendment be adopted to preclude that possibility.

That concludes my statement, Mr. Chairman.

[The prepared statement of Mr. Galvin follows:]

STATEMENT OF DENIS P. GALVIN, DEPUTY DIRECTOR, NATIONAL PARK SERVICE, DEPARTMENT OF THE INTERIOR, BEFORE THE SUBCOMMITTEE ON PUBLIC LANDS, NATIONAL PARKS AND FORESTS, SENATE COMMITTEE ON ENERGY AND NATURAL RESOURCES, CONCERNING H.R. 1173, A BILL TO PROVIDE FOR CERTAIN RESTRICTIONS ON THE USE OF LANDS WITHIN BOUNDARIES OF NATIONAL PARKS AND MONUMENTS.

JUNE 16, 1988

Mr. Chairman, I appreciate this opportunity to provide your Subcommittee with the views of the Department of the Interior on this legislation.

We support the purpose of this legislation and recommend that it be amended to require that new dams within any unit of the National Park System--not just national parks and monuments--must be authorized by Congress.

Section 1 of H.R. 1173 would prohibit the construction of any new dam or other new impoundment within the external boundaries of a national park or monument, unless developed by the National Park Service to meet park needs without degrading the resources. In addition, any new dam or other new impoundment that would inundate lands within the external boundaries of national parks or monuments would be prohibited.

Section 2 would prohibit the use of Federal lands for the expansion of the capacity of any reservoir in Yosemite National Park, absent specific Congressional action. It would require a specific Act of Congress for expansion of the existing Hetch-Hetchy reservoir at Yosemite.

In principle, Mr. Chairman, we support the purpose of this legislation. Its goal, to restrict new dams and impoundments within park or monument boundaries, is laudable. This is consistent with actions we have taken regarding such areas. For example, we have recently initiated steps to remove three dams within Rocky

Mountain National Park. Similarly, we are currently considering the idea of restoring an impounded valley in Yosemite National Park.

Our problem with H.R. 1173 is the fact that it expressly restricts new dams and impoundments in parks and monuments only, rather than restricting such activities within all units of the National Park System. By using this language, other areas of the System--such as historical parks, preserves, lakeshores, parkways, and recreation areas--might not be subject to the bill's prohibition against dams and impoundments. Specifically, the protection of park resources intended by the bill would be limited to only 49 national parks and 78 national monuments. No reference is made in this legislation to the other 212 units of the National Park System.

If H.R. 1173 were to be enacted, these 212 units of the National Park System that are not national monuments or national parks could, in fact, lose the protection that the Department believes is currently provided by the existing restrictions in the Federal Power Act from Federal Energy Regulatory Commission licensing authority.

Therefore, during consideration of H.R. 1173 in the House, we recommended that the bill be amended to apply to all units of the System. This would confirm that only the Congress has the authority to authorize the construction of new dams or impoundments in all units of the System, not just parks and monuments. I have attached our suggested amendment to this statement. Concerns that may be expressed about the effect of such language on Bureau of Reclamation projects within recreation areas are, we believe, unfounded, since new dams or impoundments in such areas would require Congressional approval in any case.

We recognize that this particular issue is ultimately for the Congress to decide. Our purpose is to ensure that your deliberations on this section of the bill are based on a full understanding of its effects. Should the Congress enact section 1 of H.R. 1173 in its current form, the Department would not recommend disapproval of the bill on that basis.

Section 2 of H.R. 1173 would prohibit use of Federal funds for the expansion of the capacity of any reservoir in Yosemite National Park unless specifically authorized by Congress. This provision would affect the Hetch-Hetchy reservoir, used to supply water to the City of San Francisco. Without clear Congressional authorization, the City or others would be prohibited from raising the elevation of O'Shaugnessy Dam or otherwise expanding the reservoir's capacity. We believe such a provision is unnecessary. This Administration will not permit raising the level of O'Shaugnessy Dam in Yosemite. As a policy matter, we have never intended, and will not allow, such an action. We will continue to protect Yosemite under existing law.

In summary, Mr. Chairman, it is regrettable that a bill designed to protect park lands could ultimately have the opposite effect on certain park units. Because we believe that it is not the intent of Congress and because we want to support the measure, I urge that our amendment be adopted.

This concludes my prepared remarks, Mr. Chairman. I would be pleased to respond to any questions you may have.

Attachment

DEPARTMENT OF THE INTERIOR
PROPOSED AMENDMENT TO H.R. 1173

To assure that H.R. 1173, if enacted, could not be construed to remove the requirement in existing law that all such new dams be authorized by Act of Congress, we recommend an amendment as follows:

> In the first section of the bill delete the words "parks and monuments," "national park or monument," "park or monument," "national park or national monument," and "national parks and monuments" wherever they occur, and substitute the words "units of the national park system" or "unit of the national park system," as appropriate.

The effect of this amendment would simply be to require that new dams within, or which would inundate lands within, any unit of the National Park System must be authorized by Congress.

Senator FOWLER. Thank you, Mr. Galvin.

If your proposed amendment is adopted, we would then expect your enthusiastic support for the legislation?

Mr. GALVIN. That's correct, Mr. Chairman.

Senator FOWLER. Under existing law protecting the units of our park system from dams and other impoundments, tell me your opinion as to whether or not that is adequate to protect our public lands from dams and such built outside of the system.

Mr. GALVIN. Our basic legal position on this is based on the Federal Power Act, as amended in 1921 and 1935. The Department of the Interior's interpretation is that it provides a prohibition against projects in any unit of the park system without specific authorization from Congress. I believe that that interpretation includes dams built outside of parks that would impound waters inside parks, which section 1 of this bill speaks to.

Now, I would point out that the Department of Energy, and specifically FERC, contests that legal interpretation. There are, in fact, several applications before FERC for licensing projects that are either within the boundaries of National Park System units or that would impound waters. One in Yosemite, as a matter of fact, on the Merced River would be built outside the park and impound waters inside the park—built by a private interest.

So, there is a disagreement about the statutory authority. Again, it centers on the term "parks and monuments." At the time the Federal Power Act amendment was passed in 1921, most of the units of the National Park System were parks or monuments. It's our interpretation that it was the intent of Congress to include all units of the National Park System in the provisions of that bill. The Department of Energy and the Federal Energy Regulatory Commission do not go along with that interpretation, I believe, although there has been no specific test of it.

Senator FOWLER. In your opinion, aside from the Merced River, are there any other units of the system that are currently being threatened by proposals for new dams or structures either within the system or outside?

Mr. GALVIN. I don't know of any specific instances of new dams; there is a proposal again by a private enterprise to add a new structure to the Yellowtail Dam, below the Yellowtail Dam in Big Horn Canyon National Recreation Area. They have applied for a license to construct that and that is currently before the Federal Energy Regulatory Commission.

Senator FOWLER. If you could—and we ought to ask FERC people—but if you, without too much difficulty, can provide us with those applications that you have described, that would be helpful.

Mr. GALVIN. We can do that, Mr. Chairman.

Senator FOWLER. And, of course, you know the Merced is now protected by the Wild and Scenic Rivers Act.

Mr. GALVIN. Not in this particular stretch I don't believe. This is the fork immediately below the developed portion of Yosemite, and I don't believe the recent——

Senator FOWLER. Would you check that for us?

Mr. GALVIN. Yes.

Senator FOWLER. We certainly need to know that and that would be very helpful.

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Thank you, Mr. Galvin, and thank you for the specificity of your proposed amendment which we will look at very carefully.

We now invite Mr. Kevin Coyle, Vice President, American Rivers here in Washington; Mr. Michael McCloskey, Chairman of the Sierra Club; and Mr. Steven C. Whitney, Director of the National Parks Program of The Wilderness Society.

STATEMENT OF KEVIN J. COYLE, VICE PRESIDENT AND CONSERVATION DIRECTOR, AMERICAN RIVERS

Mr. COYLE. Thank you, Mr. Chairman. My name is Kevin Coyle. I'm Vice President and Conservation Director of American Rivers. I'm also testifying on behalf of the National Audubon Society, the National Wildlife Federation, the Isaak Walton League of America and the Western River Guides Association.

Mr. Chairman, we support enactment of H.R. 1173. Many of the Nation's outstanding rivers are born in or flow through our national parks and monuments, and while we generally assume these rivers are protected from impoundment by dams, the law is unclear on this critical point.

A primary concern is with the 80 national parks and monuments that have been established since 1921. According to the Congressional Research Service, existing law is ambiguous on whether new dams in these national areas are, indeed, prohibited.

As you noted earlier, the Federal Energy Regulatory Commission recently issued a preliminary permit for a hydroelectric project on the Merced River that could have inundated lands within Yosemite National Park. The river has since been added to the wild and scenic river system due in no small part to the hard work of this subcommittee. So, that project will never be built.

It does, however, bring up an issue. We have some concerns that laws that are on the books may, indeed, permit dams to be built in the Grand Canyon or in Rocky Mountain National Park. We believe these potential problems should be dealt with through a categorical prohibition rather than on a case-by-case basis. Indeed, all rivers in national parks and monuments must be given permanent protection from dams.

If we have any concern with the bill, it is a hope that it be expanded to include national recreation areas, including national seashores and lake shores.

We also support the provision of H.R. 1173 that would prohibit the expansion of reservoirs within Yosemite National Park. As you know, there's a legal disagreement between the Department of the Interior and the City of San Francisco as to whether the Raker Act of 1913 would give the city to expand reservoirs in Yosemite. This bill would resolve that ambiguity.

Thank you, Mr. Chairman. We are very grateful to you for your leadership in holding this hearing. It means a great deal to us to have the Senate take this bill up.

[The prepared statement of Mr. Coyle follows:]

TESTIMONY OF KEVIN J. COYLE, VICE PRESIDENT

AMERICAN RIVERS INC.

Before

THE SENATE SUBCOMMITTEE ON PUBLIC LANDS,
NATIONAL PARKS AND FORESTS

On H.R. 1173

June 16, 1988

Also on behalf of:

The National Audubon Society

The National Wildlife Federation

The Izaak Walton League of America

The Western River Guides Association

801 Pennsylvania Ave. S.E.
Suite 303
Washington, D.C. 20003
202-547-6900

Thank you, Mr. Chairman, for this opportunity to testify before the Subcommittee today. My name is Kevin J. Coyle and I am Vice President and Conservation Director of American Rivers, the nation's principal river-saving organization. I am also testifying today on behalf of the National Audubon Society, the National Wildlife Federation, the Izaak Walton League of America.

Mr. Chairman, we support enactment of H.R. 1173. Many of the nation's outstanding rivers are born in or flow through our national parks and monuments and while we assume these rivers are protected from impoundment by dams, the law is unclear on this critical point. Eighteen of our national parks contain a total of 108 dams among them. These were constructed both before and after national designation. In 1921, Congress amended the Federal Power Act to prohibit the issuance of permits and licenses for new dams and power projects within national parks then existing. Since 1921, however, 80 national parks and monuments have been either established or expanded. According to the Congressional Research Service, existing law is ambiguous on whether new dams in these national areas are actually prohibited.

Recently, the Federal Energy Regulatory Commission issued a preliminary permit for a hydro electric project on the Merced River that could have inundated lands within Yosemite National Park. The river has since been added to the Wild and Scenic Rivers System due, in no small part, to the hard work of this subcommittee. Furthermore, some existing federal statutes appear to authorize construction of dams in such national parks as Rocky Mountain and the Grand Canyon. We believe these potential problems should be addressed through

a categorical prohibition rather than on a case-by-case basis. Indeed, all rivers in national parks must be given permanent protection from dams.

If we have any concern with the bill at all it is a hope that it be expanded to include national recreation areas including national seashores and lakeshores.

We also support the provision of H.R. 1173 that would prohibit the expansion of reservoirs within Yosemite National Park. There is a legal disagreement between the Department of the Interior and the City of San Francisco as to whether or not the Raker Act of 1913 would give the city authority to expand reservoirs within Yosemite. This bill would resolve that ambiguity.

Thank you Mr. Chairman. I will be pleased to answer any questions you may have.

Senator FOWLER. Thank you, Mr. Coyle.
Mr. McCloskey from the Sierra Club, welcome.

STATEMENT OF MICHAEL McCLOSKEY, CHAIRMAN, SIERRA CLUB

Mr. MCCLOSKEY. Thank you, Mr. Chairman. I am Michael McCloskey, and I appear today on the Sierra Club's behalf in support of H.R. 1173 which has been passed by the House and sent over here. As you know, it is designed to protect national parks and national monuments from having dams constructed within their boundaries in the future or having impoundments inundate lands within them.

This country originated the national park idea in the last century, and since that time it has spread throughout the world. As the idea has developed, it is clear that the central idea of such reserves is that the natural objects and values of such areas should be protected from alteration except to a limited extent to accommodate visitors. This idea was embodied in the 1916 Organic Act for the national park system and has since been embodied in standards set for protected areas throughout the world by the International Union for the Conservation of Nature and through standards enunciated by successive World Congresses on National Parks.

Yet, no threat is so persistent to such areas around the world than that of dams and projects to divert and store water. Such struggles began here with the invasion of Yosemite National Park in 1913 for the Hetch Hetchy project and, of course, had a more recent counterpart with the proposals to extend reservoirs into the Grand Canyon in the 1960s. And in my testimony I mention a number of other momentous struggles throughout the world that have gone on in the last few years over the integrity of national parks and threats from dams.

Despite an international consensus among authorities on the proper standards for national parks and monuments, never-ending pressures keep asserting themselves to make piecemeal compromises with their integrity. These nature reserves are exposed to pressures that keep chipping away at them.

One might think that problems of this sort in this country would be a thing of the past, but that is not the case. As we have already mentioned here this morning, FERC did issue a license on the Merced River that would back up water into Yosemite National Park. Reference has been made to the City of San Francisco. As we read it, they have not irrevocably turned their back on further raising of the Hetch Hetchy Dam in Yosemite National Park. In the city's testimony before the House two years ago, it equivocated saying it presently had no such plans and it would not raise the idea until various conditions had been met, and more recently in press statements, perhaps not for another 50 years. But its own consultants in 1981 suggested raising it between 120 and 160 feet.

And in other parks, such as Olympic National Park, Tacoma City Light has proposed raising the Cushman Dam. The Bureau of Indian Affairs is being pressed to make intrusive alterations to the Sherburne Dam in Glacier National Park. Modifications are being sought on the Jackson Lake Dam in Grand Teton National Park. And covetous eyes continue to be drawn to the Grand Canyon Na-

tional Park. Not long ago the Arizona Water Board studied the feasibility of projects within that park. And not all power withdrawals there have been vacated. And other projects still get mentioned within the Black Canyon of the Gunnison National Monument and Dinosaur National Monument.

I might add with respect to all of these old dams, 108 that have been mentioned, one of the frequent ideas for dealing with them when they become obsolete is to propose to erect new dams immediately downstream and to flood them out. That was proposed in the late 1960s in Yosemite National Park with respect to the Lake Eleanor Dam that is part of the Hetch Hetchy project.

A clear message needs to be sent by the Congress that Federal policy is that such non-conforming structures ought to be removed at the very least when they have been amortized and are in poor condition, if not before. This legislation does not go that far, but it does send part of the needed message that replacement projects will not be permitted.

One might assume that proposals of the sort that I have just described could not go forward without explicit congressional authorization, but this is not always the case. There are assertions that special provisions and exceptions provide independent authority to proceed with new dams and enlargements within national parks and monuments. Others referred to the legal research that the Congressional Research Service has done on the various loopholes and ambiguities that exist. I also summarized them in my testimony in a prepared statement, but they find authorities that may exist for FERC and for the Secretary of the Interior with respect to irrigation projects, with respect to the Corps of Engineers, with respect to the Soil Conservation Service, with respect to TVA and even the National Park Service itself.

Originally this measure as introduced in the House of Representatives sought to address the problems posed by existing projects. But as a result of changes made in it, this bill does not now deal with existing projects, nor does it deal with other types of areas administered by the National Park Service as part of the national park system, such as national recreational areas. At some point we hope the Congress will address these broader questions too because statutory guidance is needed with respect to the phased removal of nonconforming projects within the whole system—there are some 280 projects within the other types of areas in the system—and with respect to protecting the entire system from new incursions.

Some help might be afforded on the question of protecting the entire system if section 1(b) of the bill that specifies that it is not in lieu of other prohibitions were to be amended to replace the concluding words or to supplement them by saying units of the entire national park system. This minor change would avoid casting any implication that Congress meant to afford a lesser level of protection to other units in the system with respect to future dams by enacting this bill. It would leave unclouded any assertions that there are existing restrictions and prohibitions on dams in such other units.

Finally, let me say a word about section 2 of the bill. It is aimed at the issue of expanding existing reservoirs within Yosemite National Park. Under the Raker Act of 1913, the City of San Francis-

co was granted authority to construct both the Hetch Hetchy and Lake Eleanor projects within Yosemite National Park. Section 2 of this bill would prevent any expansion of the reservoirs of those two existing projects within the park unless Congress should specifically authorize that in the future. No authority to do so could be inferred anymore from the Raker Act and the President could not use section 4 of the Wilderness Act to allow the waters of raised dams there to expand into the park's wilderness areas.

It should be noted that O'Shaughnessy Dam has already been enlarged once back in 1938, and is now at the maximum height, 300 feet above the original stream level, that was suggested by the city at the time the Raker Act was passed. They suggested that was what they sought to do. Further raising of the O'Shaughnessy by 120 to 160 feet would flood between 750 and 900 acres of park land, an area comprised of emerald, rock-worn pools. This park has already been compromised badly enough and should not be threatened by further compromises.

The wisdom of this special section dealing with the threat of reservoir enlargement in Yosemite National Park also suggests that such protection should be afforded to other parks and monuments too. And this protection was in the bill as originally introduced by Congressman Lehman.

The provisions of section 1 of the bill deal only with new dams and impoundments, those whose construction commences after the date of enactment. While it is not entirely clear, this wording would probably mean that an enlargement of an existing dam would not be regarded as a new dam, that is, in places other than Yosemite National Park. Thus, as presently worded, it would not prevent the enlargement of the Cushman Dam in Olympic National Park which is being sought.

Accordingly, we would suggest that section 1 of the bill be amended to add the words "or enlargement of any existing reservoir" to the operative language of subsections 1 and 2 of section 1. This will make it clear that the size of reservoir pools cannot be expanded to flood more park land.

In conclusion, we strongly support this legislation because it will close a collection of loopholes in existing laws that put key American park lands in jeopardy and will provide clear statutory guidance that the day of building and enlarging dams in national parks is over. America will then be on the way to keeping faith with the ideas that underlie the great national park idea that it has given to the world.

[The prepared statement of Mr. McCloskey follows:]

330 Pennsylvania Avenue, S.E., Washington, D.C. 20003 (202) 547-1141

STATEMENT OF MICHAEL MCCLOSKEY

CHAIRMAN OF THE SIERRA CLUB

BEFORE THE

SUBCOMMITTEE ON PUBLIC LANDS, NATIONAL PARKS AND FORESTS

OF THE

SENATE ENERGY AND NATURAL RESOURCES

REGARDING H.R. 1173

JUNE 16, 1988

STATEMENT OF MICHAEL MCCLOSKEY

CHAIRMAN OF THE SIERRA CLUB

Before the

SUBCOMMITTEE ON PUBLIC LANDS, NATIONAL PARKS AND FORESTS

of the

SENATE COMMITTEE ON ENERGY AND NATURAL RESOURCES

on H.R. 1173

June 16, 1988

My name is Michael McCloskey. I am the Chairman of the Sierra Club and appear here today in support of H.R. 1173, which has been passed and sent over from the House. It is designed to protect national parks and national monuments from having dams constructed within their boundaries in the future or having impoundments inundate lands within them.

The United States originated the national park idea in the last century and since that time it has spread throughout the world. As the idea has developed, it is clear that the central idea of such reserves is that the natural objects and values of such areas should be protected from alteration, except to a limited extent to accommodate visitors. This idea was embodied in the 1916 Organic Act for the National Park System and has since been embodied in standards set for Protected Areas by the International Union of the Conservation of Nature (in CNPPA standards for Class III areas) and those enunciated by successive World Congresses on National Parks (the so-called "New Delhi" standards).

Yet no threat is so persistent to such areas than that of dams and projects to divert and store water. Such struggles began with the invasion of Yosemite National Park in 1913 for the Hetch Hetchy project and had a more recent counterpart with proposals to extend reservoirs into the Grand Canyon in the 1960's. They continue in modern times with battles over the Manapouri project in Fiordland's National Park in New Zealand and various projects proposed on the Franklin River in the national parks of western Tasmania. Plans for dams in two nature reserves in Thailand were just shelved (Nam Choan) after great public outcries. One of the world's greatest waterfalls in a Brazilian nature reserve was flooded out by a dam.

Despite an international consensus among authorities on the proper standards for national parks and monuments, never ending pressures keep asserting themselves to make piecemeal compromises with their integrity. These nature reserves are exposed to pressures that keep chipping away at them.

One might think that problems of this sort in this country would be a thing of the past, but that is not the case. Within the last few years, the Federal Energy Regulatory Commission (FERC) has issued a license for a project on the Merced River in California that would back water up into Yosemite National Park. The city of San Francisco has not turned its back irrevocably on the idea of further raising the Hetch Hetchy dam in that park. In its House testimony two years ago, it equivocated -- saying it "presently has no such plans" and that it would not raise the idea until various conditions had been met and perhaps not for another 50 years. Yet its engineering consultants in 1981 suggested raising it by between 120 and 160 feet (more than the fifty feet more frequently mentioned).

Tacoma City Light has proposed raising the Cushman Dam which lies within Olympic National Park, and the Bureau of Indian Affairs is being pressed to make intrusive alterations to the Sherburne Dam which intrudes into Glacier National Park. Modifications are also being sought on the Jackson Lake Dam in Grand Teton National Park. And covetous eyes still are

drawn toward the Grand Canyon National Park. Not long ago, the Arizona Water Board studied the feasibility for projects within that park, and not all power withdrawals have been vacated within that park. Other projects still get mentioned within the Black Canyon of the Gunnison National Monument and Dinosaur National Monument (both in Colorado).

Indeed, with an inventory of 108 old dams (mostly pre-dating the establishment of the areas) within existing national parks and monuments, it is likely that recurrent pressures will emerge to modernize or enlarge these structures. Eighteen of the classic parks have such structures within them, and a number have as many as half a dozen such structures. An easy way to deal with obsolescence is to flood out old structures with new and larger downstream dams. The city of San Francisco proposed to do this with respect to the Lake Eleanor Dam in Yosemite National Park in the mid-1970's.

A clear message needs to be sent by the Congress that federal policy is that such non-conforming structures ought to be removed, at the very least, when they have been amortized and are in poor condition, if not before. This legislation does not go that far, but it does send part of the needed message -- that replacement projects will not be permitted.

While one might assume that proposals of the sort I have just described could not go forward without explicit Congressional authorization, this is not always the case. There are assertions that special provisions and exceptions provide independent authority to proceed with new dams and enlargements within national parks and monuments. Indeed, the Library of Congress's Congressional Research Service reviewed the state of the law two years ago and identified a number of loopholes and ambiguities. Let me summarize them.

The Federal Energy Regulatory Commission (FERC) may have jurisdiction over licensing projects on privately held holdings within the exterior boundaries of national parks and monuments. Moreover, an ambiguity exists

with respect to whether FERC's jurisdiction was extinguished on all counts within national parks and monuments by 1935 amendments to the Federal Power Act. While those amendments clearly did extinguish its ability to assert authority within parks and monuments because they are public lands, it did leave intact FERC's jurisdiction over all sites reached through its authority over navigable streams under the commerce power. Many navigable streams can be found within parks and monuments. A 1921 amendment barred FERC from granting licenses within national parks and monuments as then constituted, but that ban does not extend to parks and monuments established thereafter or to subsequent enlargements of such areas. Thus, it is not crystal clear that FERC is without authority to grant hydro licenses within parks and monuments created since 1921. And indeed, in recent years FERC has actually asserted jurisdiction within at least two national parks (Grand Teton and Voyagers).

The Secretary of the Interior is supposed to be the guardian for national parks, but he is also the overseer of the Bureau of Reclamation and in that role has broad powers to seek to construct irrigation projects. Because of the breadth of those powers, it is far from clear that he is constrained in pursuing them in certain western national parks and monuments. In fact, there are special provisions with respect to water projects in a number of statutes for western national parks (especially Rocky Mountain NP, Grand Canyon NP, Grand Teton NP and Yosemite NP and Sequoia NP; e.g., the Right of Way Act of 1901.) A Solicitor's Opinion has raised doubts about whether the Secretary is under any clear instruction with respect to how to resolve conflicts between his various statutory obligations in this regard by the General Authorities act for the National Park System enacted in 1970.

Other agencies with general authority to construct dams and impoundments also seem to be under no special constraints with respect to national parks and monuments: the Corps of Engineers with respect to small-scale navigation projects, the Soil Conservation Service with respect to

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small dams and channelization schemes, and TVA in its operating area. Even the National Park Service seems to have broad authority to dam and divert water for hotels, camps and concessionaires in parks and monuments.

Originally this measure, as introduced in the House of Representatives, sought to address the problems posed by existing projects, but as a result of changes made in it this bill now does not deal with existing projects. Nor does this bill deal now with other types of areas administered by the National Park Service as part of the National Park System, such as National Recreation Areas. At some point, we hope the Congress will address these broader questions too because statutory guidance is needed with respect to the phased removal of nonconforming projects within the whole system (there are 280 projects within other types of areas in the system) and with respect to protection of the entire system from new incursions.

Some help might be afforded on the question of protecting the entire system if Section 1(b) of the bill, specifying it is not in lieu of other prohibitions, were to be amended to replace the concluding words "national parks and monuments" with the phrase "units of the National Park System." This minor change would avoid casting any implication that Congress meant to afford a lesser level of protection to other units in the system, with respect to future dams, by enacting this bill. It would leave unclouded any assertions that there are existing restrictions and prohibitions on dams in such other units.

Let me also note that while the bill does continue authority in the National Park Service to construct dams for park purposes, it limits that authority to dams needed to meet the "requirements for which the park or monument was established" and provides that the dam must not degrade park resources. We think this provision is well conceived and will prevent any substantial structure from being constructed.

Finally, let me say a word about section 2 of the bill. It is aimed at the issue of expanding existing reservoirs within Yosemite National Park.

Under the Raker Act of 1913, the city of San Francisco was granted authority to construct both the Hetch Hetchy and Lake Eleanor projects within Yosemite National Park. Section 2 of this bill would prevent any expansion of the reservoirs of those two existing projects within the park, unless Congress should specifically authorize that in the future. No authority to do so could be inferred any more from the Raker Act. And the President could not use section 4 of the Wilderness Act to allow the water of raised dams there to expand into the park's wilderness areas. It should be noted that O'Shaughnessy Dam (the Hetch Hetchy project) has already been enlarged once (in 1938) and is now at the maximum height (300 feet) suggested at the time the Raker Act was passed. Further raising of the O'Shaughnessy Dam by 120 to 160 feet would flood between 750 and 900 acres of parkland, an area comprised of emerald, rocky pools. This park has already been compromised badly enough and should not be threatened with further compromises.

The wisdom of this special section dealing with the threat of reservoir enlargement in Yosemite National Park also suggests that such protection should be afforded to other parks and monuments too (and it was in the bill on this subject originally introduced by Rep. Richard Lehman). The provisions of Section 1 of the bill deal only with "new" dams and impoundments, i.e., those whose construction commences after the date of enactment. While it is not entirely clear, this wording probably means that an enlargement of an existing dam would not be regarded as a new dam. Thus, the bill as presently worded might not prevent the enlargement of the Cushman dam in Olympic National Park.

Accordingly, we would suggest that section 1 of the bill be amended to add the words "or enlargement of any existing reservoir" to the operative language of subsections (1) and (2) of section 1. This will make it clear that the size of reservoir pools cannot be expanded to flood more park land.

In conclusion, we strongly support this legislation because it will close a collection of loopholes in existing laws that put key American

parklands in jeopardy and will provide clear statutory guidance that the day of building and enlarging dams in national parks is over. America will then be on the way to keeping faith with the ideas that underlie the great national park idea it has given the world.

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Senator FOWLER. Thank you very much, Mr. McCloskey.
Mr. Whitney of the Wilderness Society.

STATEMENT OF STEVEN C. WHITNEY, DIRECTOR, NATIONAL PARKS PROGRAM, THE WILDERNESS SOCIETY

Mr. WHITNEY. Thank you, Senator Fowler. I'll be brief.

My name is Steve Whitney. I serve as The Wilderness Society's program director for national parks. Today I am also testifying on behalf of the National Parks and Conservation Association. They asked to be associated with my remarks today.

Our two organizations support H.R. 1173. The bill is a long overdue, necessary clarification of the existing prohibition on new dams in our national parks and national monuments. While our support for the bill is unequivocal, we recommend the committee consider really two amendments that would substantially improve it.

First, we believe that all existing water development facilities and impoundments located within units of the national park system should be subject to a special use permit administered by the National Park Service. This would be a permit in addition to other necessary licenses, such as FERC licenses and so on. I don't think we want the Park Service in the business of licensing hydroelectric projects, but they certainly should have a say in the operation, maintenance and management of existing facilities.

There is a precedent for this, the Kaweah project in Sequoia National Park. It's a hydroelectric project owned and operated by the Southern California Edison Company. That particular project is also not only subject to a FERC license, but to a Park Service special use permit. And the Park Service places necessary conditions on environmental mitigation, for temporary access to the facility, maintenance, that kind of thing to ensure that the operation of the dam doesn't harm other important park values. We think that's a pretty good example of how these facilities ought to be operated around the park system. Unfortunately, that's the only example I know of.

A couple of places where it would help. One is at Voyagers National Park where three dams impound two—actually regulate water levels in two natural lakes. Those are private dams. Boise-Cascade Company owns those dams and they have been operated within the constraints of an international joint commission treaty.

Last year the FERC had asserted authority for licensing the hydroelectric capacity of those dams. As a part of that license, they have required Boise-Cascade to work with the Park Service on environmental mitigation. Boise-Cascade has now appealed that part of the license requirement.

One other way to get at that would be for the Park Service to have the authority to, through a special use permit, place conditions of their own, rather than ironically having the Park Service rely on the Federal Energy Regulatory Commission for environmental protection of park resources.

Similarly, the Cushman Dam in Olympic, as Mr. McCloskey mentioned, the dam is actually outside the park, but the reservoir does inundate park land. There is a current proposal in the context of

the Tacoma City Light relicense application to raise the height of that dam and further inundate park land.

Bandolier National Monument also is inundated seasonally, particularly in the spring, by the Cotchatee Reservoir downstream. There the culprit is the Army Corps. The Corps is unwilling to release water at a rate and time appropriate to protect important park resources, primarily centuries old ponderosa pines. There it's not just a fact that they can't be inundated. They can, in fact, withstand some inundation for a short period. It's the duration of the inundation year after year which has become a problem. The Park Service next week will be talking to the Corps in Albuquerque about this issue once again. This bill I think would send an important message and maybe help that process along even if it wouldn't directly solve that problem.

The second amendment we would like to see is the one Mr. Galvin mentioned a few moments ago, and that is to extend the provisions of this bill to all units of the national park system. Even expansive Glen Canyon National Recreation Area in Utah, which owes its very existence to an artificial impoundment, one that is quite unfortunate I might add, includes within its boundaries a vast back country area. There are some canyons in there that perhaps never have been explored. We think that those resources deserve the same protections as do the back country areas of the Grand Canyon National Park just downstream, for example.

So, in conclusion, while supporting the bill, we believe it should be amended to apply to all units of the national park system, not just the national parks and monuments. We also believe that Congress should specify that all existing water projects within the boundaries of the national park system be subject to a special use permit. These are reasonable I think and would certainly serve to enhance the protections afforded by the bill.

Thank you.

[The prepared statement of Mr. Whitney follows:]

THE WILDERNESS SOCIETY

TESTIMONY OF STEVEN C. WHITNEY, THE WILDERNESS SOCIETY, ON THE BILL H.R. 1173, BEFORE THE UNITED STATES SENATE, COMMITTEE ON ENERGY AND NATURAL RESOURCES, SUBCOMMITTEE ON PUBLIC LANDS, NATIONAL PARKS AND FORESTS, JUNE 16, 1988.

Mr. Chairman, members of the Committee, my name is Steven C. Whitney and I serve as Director of The Wilderness Society's National Parks Program. The Wilderness Society is devoted exclusively to the wise management and protection of the nation's public lands. On behalf of our 230,000 members, I appreciate this opportunity to testify in support of H.R. 1172, an act to provide for certain restrictions on the use of lands within boundaries of national parks and monuments.

I am also testifying today on behalf of the National Parks and Conservation Association (NPCA). Founded in 1919, NPCA focuses its work on the protection and perpetuation of the National Park System. Please associate the National Parks and Conservation Association with my prepared remarks today.

H.R. 1173 is a long-overdue, necessary clarification of the existing prohibition on new dams in our national parks and national monuments. Now is the time to draw the line on new water projects within the boundaries of our national treasures. The problem is a real one, and is only likely to grow more difficult as population pressures increase and world energy supplies become more limited.

Dams and hydroelectric facilities now exist in many of our national parks: Olympic, Grand Teton, Voyaguers, Yosemite, Sequoia and others. And while H.R. 1173 is silent on the question of how appropriate these existing facilities are in their present configuration, Section 1 of the bill does state very clearly that future inundation of national park land shall be prohibited.

Section 2 of H.R. 1173 pertains exclusively to O'Shaughnessy Dam and the Hetch Hetchy Reservoir in Yosemite National Park. Quite simply, this section states clearly and directly, that the reservoir shall not be expanded in capacity and parkland further inundated without authorization of the Congress. This particular project is singled out because the legislative history of the Raker Act which authorized the project in 1913, and the legal record since, is complex and some believe ambiguous on this point. We strongly support Section 2 of the bill.

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While our support for H.R. 1173 is unequivocal, we recommend the committee consider two amendments that would substantially improve the bill and enhance the protections afforded by it. Specifically, we believe the bill should be amended to encompass the following:

1. The bill should require that all existing water development facilities located within units of the National Park System be subject to a National Park Service (NPS) special use permit, in addition to other needed licenses and permits. This would allow the National Park Service to place conditions necessary for resource protection on their operation, maintenance, repair and reconstruction.

For example, the existing private hydroelectric facility operated by the Southern California Edison Company on the Kaweah River in Sequoia National Park, is subject to both a FERC license and a congressionally authorized and reviewed NPS special use permit. Such an arrangement serves to ensure that the operation of the hydro facility is consistent with NPS obligations for resource protection.

2. The bill should apply to all units of the National Park System, not just to national parks and national monuments. Even expansive Glen Canyon National Recreation area, which owes its very existence to an artificial impoundment, includes within its boundaries a vast upland backcountry area containing some of the most important geologic features, cultural resources and wildlife habitat in the southwest. Many of these lands have not been fully explored or their resources inventoried.

The prohibition on new dams contained in H.R. 1173 should apply to Glen Canyon's wild lands as it does to the Grand Canyon downstream. Certainly our national seashores, lakeshores, preserves, and many sites commemorating the history of our nation deserve this same protection from inappropriate water development projects.

In conclusion, we support enactment of the bill H.R. 1173. It is an important bill which serves to clarify existing law and places our national parks and monuments off-limits to future water and hydroelectric development projects.

While supporting the bill, we believe it should be amended to apply to all units of the National Park System, not just to national parks and monuments. We also believe Congress should specify that all existing water projects within the boundaries of National Park System units must be subject to a special use permit administered by the National Park Service.

Thank you.

Senator FOWLER. Thank you very much, Mr. Whitney.

I heard your endorsement of the Park Service's proposal. Are the two of you in agreement that that would be a welcome expansion if we included all the units? You may not have seen the amendment exactly as drafted. In concept you like that idea.

Mr. MCCLOSKEY. Yes.

Senator FOWLER. I wish you would take a look at it and let us know if you agree with the language as specifically drawn.

Gentlemen, your testimony was very clear and supportive, and I appreciate it. Thank you very, very much.

Lastly we have Mr. John Scheltens, President-elect of the National Speleological Society from Hot Springs, South Dakota, and Dr. George N. Huppert, President of the American Cave Conservation Association from Horse Cave, Kentucky. One of you looks like they'd fit in a cave; the other one doesn't. [Laughter.]

STATEMENT OF JOHN SCHELTENS, PRESIDENT-ELECT, NATIONAL SPELEOLOGICAL SOCIETY, INC.

Mr. SCHELTENS. Mr. Chairman, we have submitted written testimony. I will summarize that and keep our testimony short.

My name is John Scheltens. I'm the President-elect of the National Speleological Society. And a little background on the National Speleological Society. We are the largest organization in the world that relates to caves and cavers. We're kind of an umbrella organization that encompasses not only the professional, but the recreationists, the amateurs, the manager, the conservationist. And you can't go any place in this country without basically talking about the National Speleological Society or run into its members.

There are over 40,000 caves in this country, 40,000 that we know of, and many more to be found. Of that 40,000, over 4,000 are presently known to be on land that's under the control of the Federal Government, primarily the Bureau of Land Management and the national forest lands.

On the surface—or below the surface in this case—it may appear to be a rock-solid type of resource, but in reality they are very delicate ecosystems that interrelate in a very complex manner with the surface. For example, many caves act as underground conduits for groundwater, and groundwater contamination certainly is a very important topic in the country this year. And groundwater in karst areas is rapidly contaminating karst areas. And karst areas service many, many hundreds of thousands of people in various communities around this country.

Some caves contain many delicate and rare crystal formations that, once destroyed by either a careless or a reckless vandal, are lost forever. Some caves house sensitive and endangered life forms, endangered species and very sensitive types of life forms that can only grow and live in a dark environment. Others contain priceless artifacts from our past. Caves basically are a very important natural resource in this country.

And the present laws, the present regulations, that the Forest Service and the Bureau of Land Management and the National Park Service and other Federal land managers have could be broadly interpreted to protect these resources. In fact, if indeed

this had been done, then I wouldn't be here today because the problem really lies with not that they don't have the authority to do so, but rather that over the last 50 years of our organization, we have documented many, many cases of a slow decay of these resources, and the job really isn't being done in all areas the way it ought to be done.

For example, I have some pictures that I brought with me that relate to caves down in the southwest. All these caves are located in Federal land resources. They give you some sort of an idea of what we're really trying to protect here. Exceptionally beautiful locations, delicate locations that once vandalized are lost forever.

What I have brought with me here are two land resource management plans, an identical area basically in the western United States. Part of this area is managed by the Bureau of Land Management. The other part of this area is managed by the national Forest Service. Basically in my right hand I have the land management document from the Bureau of Land Management portion of these lands, and both these lands, both in the Bureau of Land Management and the Forest Service, contain many, many very significant cave resources.

Now, although there has not been any direction in whether or not to protect the cave resources in this area, in this particular case the Bureau of Land Management—you can see all these paper clips in here—refers to the cave resources that are within their jurisdiction in this particular district in the west. They have done in my opinion an excellent job of incorporating caves and cave resources into their overall land management plan which, of course, involves such things as forestry and mining and recreational activities, hunting and fishing, whatever.

To give you an example, one of those caves that's in that plan is this picture located here which, if you can see from that location, is a very beautiful cave formation. It's very well protected.

Senator FOWLER. Where is that?

Mr. SCHELTENS. This is in the Big Horn Mountains of Wyoming. The cave is called Horse Thief Cave, and it's on the western flanks of the Big Horns.

In the same mountain range, we have this particular land management plan that also has—it's the same limestone formation, contains the same cave resources. It's just that they cross an imaginary boundary that the Forest Service now manages. This particular land management plan has over 500 pages, but the word "cave" is not mentioned anyplace in this particular document, not once.

This is a particular picture of a cave that is in this district as a result of not properly taking caves into consideration. As you can probably see from the picture, not only the graffiti, but you can notice the garbage, the bottles, the cans, the beer cans, and whatever. This is a recently taken picture to show you want types of things happen if caves are not managed particularly carefully.

This is another similar picture from another cave in the Mount Gila National Forest with the same kind of results from not being properly managed.

The point here is not to praise the Bureau of Land Management nor to lay blame on the Forest Service because, unfortunately, if I go to another part of the country, the results are just the oppo-

site—parts of the country where the Forest Service has done a very admirable job of putting together cave management plans and the Bureau of Land Management has been negligible.

The problem is if there is no specific legislation that really says the caves are important, that you should incorporate them into land management plans. And that's really what this legislation is about. It's to be able to do those types of things.

Before you, you have two bills, Senate 927 and House Bill 1975. H.R. 1975 was introduced a year ago in April. It has the support of 30 Representatives from the House. It has undergone continuous scrutiny and revisions in trying to satisfy everybody's particular concerns, not only the House members and the members of the committee, but of the agencies, the Bureau of Land Management, the Forest Service and the other conservation organizations who have expressed concern. We have tried to work with all those agencies, and up until basically the last couple of days, I was under the impression that those were resolved. From today's testimony, apparently there are still some questions that need to be resolved. So, I'm a little bit surprised at that.

Basically the National Speleological Society supports the revised bill, H.R. 1975, with basically two minor concerns with the present wording. On section 4(d) which relates to exemptions, we believe the current wording provides many loopholes which do not ensure that the exemptions are based on careful considerations. We propose that this section be strengthened to ensure the intent of Congress, and we have submitted a proposed rewording in the written testimony.

The other section relates to part 6(a) of section 7 which also has to do with exemptions. This section states the prohibitions contained in the subsection shall not apply to any action authorized under applicable state or Federal laws. We basically support elimination of this section because section 4(d), the one I just quoted, already provides for adequate allowance for exemptions, and retention of this section would allow for caves to be automatically exempt in an area where some state or other law may apply. And we would not like to see that happen. If there's an exemption section, let it go through the exemption proceedings to be able to get the input to be able to correct that.

There was some testimony presented earlier that I would like to make a comment on which was presented by some of the agencies. There was a concern about what is significant caves and what is an insignificant caves. And some of the agencies would like to see the wording strengthened on that.

Basically the intent that we have is basically to leave the significance question to the agencies in their regulations because the definition of "significant" is very difficult to define partly because it involves not only location—for example, a significant cave in California may not necessarily be a significant cave in Kentucky.

Also, it has to do with the time factor. For example, a good example—you may be familiar with the word "Lechaguilla Cave" in New Mexico which is on Carlsbad Caverns National Park. Two years ago it was just what would be considered an insignificant cave. It only had about 200 feet of passage. It seemed to dead-end and didn't go anyplace. Well, since that time explorers have gotten

through some breakdown areas. They now have a cave system over 13 miles long. It is deeper than Carlsbad Caverns. It is becoming bigger than Carlsbad Caverns, and the formations in it rival and are much larger than anything Carlsbad Caverns has to offer. So, the definition of significance, of course, has to revolve with time.

What we would suggest is that the significance question be left to the local area land managers in their land management planning after inventory is conducted. You basically conduct an inventory of your resources just like you do with all your other surface resources. Then you can determine which caves need to be managed more closely and which ones don't need as much scrutiny. And then as land management plans are reviewed every 10 years, then look into it to see whether any changes are particularly necessary.

I would like to also say that the National Speleological Society is joined by many other very fine conservation organizations in support of this legislation. These include organizations such as the Defenders of Wildlife, Outward Bound, the National Audubon Society, the National Wildlife Federation, the Nature Conservancy, and the Sierra Club, just to name a few. They have submitted letters of support for this legislation, and I'm very proud that they are joining us.

And finally, Mr. Chairman and members of the subcommittee, I would like to extend a personal invitation for you to visit a Federal cave in your home state. I would be more than happy to arrange with the local NSS members there to take you on a trip and to see kind of firsthand what this is all about. I extended this invitation to Senator Daschle about two years ago. He graciously accepted, and I think from his testimony this morning I think he was very well convinced as to the necessity of this legislation.

I thank you, Mr. Chairman.

[The prepared statement of Mr. Scheltens follows:]

NATIONAL SPELEOLOGICAL SOCIETY, INC.

affiliated with the American Association for the Advancement of Science
Dedicated to the exploration, study, and conservation of caves

TESTIMONY OF THE NATIONAL SPELEOLOGICAL SOCIETY, INC.

AT A HEARING CONDUCTED BY THE

SUBCOMMITTEE ON PUBLIC LANDS, NATIONAL PARKS, AND FORESTS

OF THE COMMITTEE ON ENERGY AND NATURAL RESOURCES

U. S. SENATE

June 16, 1988

Concerning:

S. 927

THE FEDERAL CAVE RESOURCES PROTECTION ACT

Cave Avenue *Huntsville, Alabama 35810* *AC 205 852-1300*

TESTIMONY OF THE
NATIONAL SPELEOLOGICAL SOCIETY

June 16, 1988
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Mr. Chairman and Members of the Subcommittee:

My name is John Scheltens, and I am the President-elect of the National Speleological Society. The NSS is the largest organization in the United States, and indeed in the world, which is concerned specifically with caves. It was created in 1941 for the purpose of promoting and advancing the study of caves and the protection of caves and their contents. Our members are professional and amateur speleologists, cave managers, cave conservationists, sport cavers, and people who simply are concerned about caves and their resources.

Today this Subcommittee is considering two versions of the Federal Cave Resources Protection Act -- S. 927, which was introduced in the Senate by Senator Tom Daschle on April 7, 1987; and H.R. 1975 as amended and passed without a dissenting vote by the House of Representatives on March 28 of this year. When H.R. 1975 was introduced in the House, it essentially contained the same wording as S. 927 which is before you. H.R. 1975 was co-sponsored by thirty Representatives and went through an extensive review process by the Subcommittee on National Parks and Public Lands prior to passage. During that review, a major effort was made to reconcile all differences of opinion and resolve all areas of concern. The bill that passed the House includes improvements made to the original version as the result of suggestions by the affected agencies and concerned organizations and individuals. The National Speleological Society supports passage of the Federal Cave Resources Protection Act and urges your endorsement of the version which was accepted by the House.

This legislation is supported by many other organizations, including the Defenders of Wildlife, Outward Bound USA, the National Audubon Society, the National Wildlife Federation, The Nature Conservancy, and the Sierra Club. A

copy of the letters indicating the support of most of these and other organizations previously has been provided to the Subcommittee.

Mr. Chairman, caves are a little-recognized but important nonrenewable national resource which should be protected from pollution and vandalism.

Some caves contain numerous delicate and unusual mineral formations. These formations, which have taken centuries to form, can be destroyed in seconds by vandalism or carelessness.

Some caves are conduits for underground rivers which serve as water supplies for farms and rural communities. Pollution of these caves by trash or leachates from landfills, industrial sites, or construction results in the expenditure of millions of dollars of taxpayers' money in necessary water treatment.

Many caves also serve as the habitat of unusual species which depend for their survival on the delicately-balanced environment of the cave. Cave species, isolated from other populations of their kind, evolve independently and adapt to the unique conditions in the cave. A few of these species, such as the Indiana bat and the Kentucky cave shrimp, have been recognized as nationally endangered by the U. S. Fish and Wildlife Service, but many others which deserve and qualify for that designation have yet to receive that level of protection.

During the almost fifty years of our existance, the NSS has located and studied caves across our country. Because of the reports, pictures, and research data which have been compiled, we are very aware that our nation's cave resources are being degraded at an increasingly rapid rate. Many caves have been polluted by graffiti and trash left by thoughtless visitors. Heavily

decorated caves discovered only a few years ago have been irreparably vandalized. The water in caves no longer is safe to drink, and entire populations of aquatic cave species have been destroyed by pollution.

There are approximately 40,000 caves currently known to exist in the United States, and there still remain large areas of our country which have not been fully explored for caves. The Federal government is the largest cave owner in the country, with over 4,000 caves known on lands under the jurisdiction of the Bureau of Land Management and the Forest Service alone.

Many of us have visited beautiful and unusual caves like Carlsbad Caverns in New Mexico, Wind Cave in South Dakota, and Mammoth Cave in Kentucky. These caves, representing primary features in the National Park System, are well protected and managed under existing laws. The protection provided to other Federal cave resources, however, is not mandated. While existing laws could be used to provide caves with the level of management concern and protection they need, the word "cave" appears in none of them. Non-specific regulations have led to varied and inconsistent interpretations among Federal land managers as to the importance of protecting caves.

As an example of this inconsistency, the Black Hills National Forest of South Dakota has no cave management regulations, yet there are over sixty caves found in that jurisdiction. On the other hand, the National Forest District Office for the White River Plateau in western Colorado has developed extensive cave protection policies and plans for caves located in that area.

Last year both the Bureau of Land Management and the Forest Service developed land resource management plans for separate areas in the Big Horn Mountains of Wyoming. BLM did an excellent job for the Washakie Resource Area. Their management plan considered caves along with the area's wildlife, plants, water, and

other natural resources. While the plan contains provisions for protection of cave resources, it still continues to provide for recreational caving, mineral and gas exploration, timber harvesting, summer livestock grazing, hunting, fishing, and many other uses.

The management plan for the adjacent Big Horn National Forest, however, does not even mention the word "cave" in its 441 pages, despite the fact that several significant and heavily visited caves are located within the Forest boundaries. This apparent lack of management concern for caves is resulting in the careless loss of irreplaceable resources.

In New Mexico important resources like Yellowjacket, Ft. Stanton, Sand, and Endless Caves in the Bureau of Land Management's Roswell District and Cottonwood and Hidden Caves in the Lincoln National Forest show the devestating effects of management neglect with their broken formations, trash, and grafitti.

These examples are not intended to find fault with one agency and praise another. Our comments are made simply to illustrate the important fact that there is much variation in how local Federal land managers consider their responsibilities toward caves. In some areas this is allowing these non-renewable resources to be destroyed.

The Federal Cave Resources Protection Act is needed to require Federal land managers to identify and consider cave resources in land use planning. It will encourage agency land managers to identify the sensitivity of specific caves and make informed management decisions as they determine the level of use appropriate for the caves under their jurisdiction. The Act does not require additional appropriations to fulfill its requirements. It does encourage multiple use of Federal lands, based on decisions which include knowledge of the cave resources in the area to be affected.

As Congressman Lujan stated on March 28 in his comments on the House floor in support of this legislation, the Act does not require a new land management planning process for the areas which it affects. Cave resources, however, would have to be considered in new, amended, or revised plans. The key word is "considered"; if existing plans are being revised because of specific issues which would have no impact on caves, a simple statement to that effect would be sufficient. The intent of the Act is to ensure that agency land managers do not ignore the values of cave resources, as has been done too often in the past.

The definition of the word "cave" as currently contained in the legislation is an important one. This definition ensures that every cave be considered on its own merits and that the resources it contains be protected unless a specific decision is made to the contrary. Although the state cave surveys sponsored by the NSS have compiled a great deal of information, there still are many caves which have not been investigated fully.

An example of the wisdom of protecting all cave resources exists at Lechaguilla Cave, located in Carlsbad Caverns National Park, New Mexico. Until recently it was thought that Lechaguilla consisted simply of a few hundred feet of passage. In 1986 cavers dug through a rock plug and discovered previously unknown passages containing mineral formations which surpass those found at Carlsbad and appear to be unique in the world. The cave now is known to be deeper than Carlsbad, and approximately thirteen miles of passage has been surveyed. The Denver Museum of Natural History is producing a video program of the wonders which have been found in what used to be considered an "insignificant" cave.

If a new cave or new passages in a known cave are discovered which are found to contain important resources, they must be protected. An informed decision on whether or not those resources are present cannot be made until the specific cave is investigated. We therefore urge that the existing definition be kept intact.

The NSS supports retention of the special fund where money raised from sources like fees and fines would be deposited, and which would be used to repair and manage the specific affected cave. Our members have worked for many years to develop restoration techniques which allow broken formations to be glued back together. We have organized clean-up trips to remove trash and grafitti from caves. Money in the special fund would be available to help offset the expenses involved in these efforts as well as to support improved management at the damaged cave...It is appropriate and just that those who degrade a cave help, through their fines, to restore the resources which they damaged.

Mr. Chairman, we agree with the National Wildlife Federation, which stated in a May 11 letter to Senator Bumpers that there are two remaining areas of concern in H.R. 1975.

The first of these is Section 4, Sub-section (d), which requires some revisions which would help to clarify the intent of Congress. The existing wording does not ensure that exemptions made to the provisions of the Act are based on careful consideration of the resources which will be affected, and it does not allow a sufficient time for public review and comment. We agree with the National Wildlife Federation that the language of this sub-section should be revised to read:

Section 4.(d) Exemption.--The Secretary may exempt any cave located on Federal lands or Indian lands from any or all of the provisions of this Act pursuant to this subsection. The Secretary shall promulgate regulations under which such exemptions may be granted. The regulations shall require that to be exempted from the provisions of this Act, the Secretary must find that the exemption is in the Nation's best interest. The Secretary shall make a final determination on exemptions pursuant to public notice and comment. The Secretary shall publish a public notice in the FEDERAL REGISTER and in a newspaper of record in the vicinity of the affected cave, setting forth the reasons for the proposed exemption from the provision or provisions concerned and specifying that the public shall have 60 days to comment on the proposal. Any decision under this section shall be subject to other Federal Law, including the National Environmental Policy Act and the Endangered Species Act."

The other area of concern with H.R. 1975 relates to Part (6) of Sub-section (a) in Section 7. This Part states, "The prohibitions contained in this subsection shall not apply to any action authorized under other applicable State or Federal laws (including fish and wildlife laws)." We support the elimination of this Part from the Act. Section 4(d) provides an adequate remedy for any exemption necessary in the enforcement of the Act. Retention of Part (6) as it currently reads would allow caves to be excluded automatically from land-use considerations in any area where another law might be applied. This would defeat the basic intent of the Act, which is to ensure that the values of cave resources are considered in any area where other activities are planned which might impact upon them.

We believe that the reason behind the inclusion of Part (6) by the House was to ensure that state fish and game laws would not be superceded by the Federal Cave Resources Protection Act. If, therefore, the members of the Subcommittee believe that Part (6) covers an essential point and should be retained, we suggest the following language:

> Section 7.(a)(6)--Nothing in this Act shall be construed as affecting the authority, jurisdiction, or responsibility of the States to manage, control, or regulate resident fish and wildlife in any area to which this Act applies, nor as authorizing the Secretary concerned to require Federal permits to hunt and fish on such lands or waters. The Secretary concerned, however, may designate areas to which this Act applies and establish time periods in which no hunting or fishing will be permitted for reasons of public safety, administration, or compliance with applicable laws.

With these changes, Mr. Chairman, the National Speleological Society fully supports passage of the Federal Cave Resources Protection Act and urges the endorsement of the Subcommittee for H.R. 1975, which was passed by the House of Representatives.

Thank you for the opportunity to present these views.

Senator FOWLER. Where can we go we don't have to crawl? [Laughter.]

Senator Bumpers, the Chairman of the subcommittee, and I don't want to have to crawl. [Laughter.]

Mr. SCHELTENS. This could be arranged, but it's like I put it to my Senator Daschle. I said I'd like to see my Congressman get down and dirty. [Laughter.]

Senator FOWLER. Actually in a halfway serious question, these pictures you've given us from Coronado National Forest in Arizona—is that cave, for instance, open to the public?

Mr. SCHELTENS. It currently has a gate on it that is controlled by local members through a cooperative agreement of the NSS. In other words, if people want to visit it, we're helping—basically we being the NSS—manage it by being able to issue the keys or take people to the cave to be able to show it to them. But it is not open for anybody who wants to go in.

Senator FOWLER. I know there are terms of art that I'm going to miss here. But besides Carlsbad Caverns and Mammoth Cave in Kentucky, which I will describe for a lack of a better term now as commercial caves where you have facilities and guides and probably a licensee or concessionaire or something there to do it, how many large caves are there that have been identified on national forest lands that this legislation is designed to protect? And by "large" I mean large where you can walk around and roam around and don't have to crawl around?

Mr. SCHELTENS. Well, large can be measured several different ways. One, of course, is by diameter of the passage. The other is by the length of the passage. I think on our national caves list that we maintain for large caves, which we relate to length of the cave, something that is over I believe two miles in length, the list is so long it occupies a number of pages. And I could give you the exact number, but it is in the hundreds.

Senator FOWLER. Do spelunkers now in your association—is it part of your tenet to maintain the cave in absolutely the position that you find it? Or if you have a room this size in a cave and a room across the hall in the cave, and the passage is you've got to crawl through it, do you crawl or do you enlarge that hole so that you can get through it a little easier?

Mr. SCHELTENS. Well, that's probably a constant battle between our members and other people. From the purist standpoint, you know, there are people who believe that no, don't disturb anything. From a little more practical point, people want to say, well, let's see what's in the room beyond, and is it worth the risk to enlarge this hole to see what is beyond.

In the particular case of Lechaguilla Cave that I just mentioned, it was well worth the risk of moving a few rocks to see what was beyond.

Senator FOWLER. And you're willing to leave that kind of decision to the land management plan and to the agency, the Park Service or the Forest Service or wherever the cave is located.

Mr. SCHELTENS. That's correct.

That's a judgment call that needs to be made on an individual basis.

Senator FOWLER. Gentlemen, I'm going to have to leave. The Chairman, Mr. Bumpers, will be good enough to finish up with Mr. Huppert, and you, Mr. Scheltens. Then he will have his own questions. I do wish you would address the question for him and for the staff which I understand in theory, but I don't understand in application of what you described as the split estate caves and how you propose to handle that in this legislation.

Thank you, Mr. Chairman.

Senator BUMPERS [presiding]. Mr. Huppert?

STATEMENT OF DR. GEORGE N. HUPPERT, PRESIDENT, AMERICAN CAVE CONSERVATION ASSOCIATION

Dr. HUPPERT. Thank you, Mr. Chairman. I'm George Huppert, the President of the American Cave Conservation Association, and I'm happy to be here to offer our association's strong support for S. 927 and the Federal Cave Resources Protection Act. This act will help to fill the omission in Federal law where cave resources have been frequently ignored by agency personnel because such resources are not specifically mentioned in present laws.

As you have been informed by other speakers, caves are extremely fragile and valuable natural resources. They can be hydrologically significant to the quality of groundwater. They are a mirror of the regional subsurface geology. And in addition, they can be habitat for unique and rare or endangered species. S. 927 will enhance existing state and Federal statutes in protecting these species.

In the past, unfortunately, Federal cave management, where it existed, has frequently been dictated as a result of a reaction to an unfortunate event or perceived hazard. And generally cave management was an overreaction to liability concerns. As a result many early cave management plans were simply closure and access regulation systems without more involved concern for the resource itself.

Fortunately, this situation is changing. More recent cave management plans have become much more resource oriented than in the past. Recent policies issued by the Forest Service and the Bureau of Land Management and revisions of these policies have given some input for managers to use in managing caves. Unfortunately, these policies do not have the impact of law and do not require managers to concern themselves with caves at this point.

An important tool in the law that we are concerned with is the exemption from the Freedom of Information Act included in the law. This element is critical for land managers to get full handle on the resource that they own. Most of the caves on Federal lands have been found, explored and are being found and explored by cavers of the National Speleological Society and other organizations. Many of these people are very leery of letting this information out in concern that the caves may not be protected under present statutes. The exemption from the Freedom of Information Act allowing these resources to be protected would certainly help in getting this information to the land managers where they can properly assess the resource that they have on their lands.

To continue on, the association would like to see some minor changes made in the present draft, and these changes are essential-

ly the same that the NSS has just brought up to you. We would like to see under exemptions in 4(d) in the act the present 30 day notification period extended to at least 60 days. We would like to see these published in the newspaper of record for the local area.

And the other provision 7(6)(a) where the act may be superseded by existing fish and game laws could essentially gut the intent of the act. And we would like to see that section removed from the act. Many present fish and game laws could possibly be used to subvert the intent of the act whether knowingly or unknowingly. If this provision is removed, we certainly would feel that the bill would be much stronger in the protection of caves.

As you have already been informed, there is a great inconsistency among Federal agencies and their units in the way they manage or perhaps non-management of caves. I have some examples myself. One here for the Cody planning area of the Warlin District of the BLM, much like the one John showed you, has good, full representation of the cave resource and considerable amount of concern has gone into this piece of work on how to protect the caves. And we feel this is an excellent example of what can be done by a Federal agency.

More specific to caves, the Ely District has produced a cave management plan that is a general management plan for caves on their land, and it also includes how to manage caves they don't even know they have yet. In other words, what if we discover a new cave? What do we do? And, again, we think this is an excellent document.

Unfortunately, for every excellent document that we have protecting caves on units of the Federal Government, there are many, many caves that do not come under any kind of protection not only because perhaps the land resource managers are unaware of the cave, they may not be aware of the resource value of caves as well. And this act will hopefully change that perception.

In September of 1987, the delegates of the fourth World Wilderness Congress held in Estes Park—this congress included some of the most notable names in international conservation—passed without objection a resolution for world governments to recognize the value of caves by creating cave wildernesses. It is now time for the United States to take a similar stand by passing this act in order to make Federal land managers aware of the value of caves and mandating effective, consistent and long-term management directives for the protection of caves.

I wish to thank you again for the opportunity to enlighten you on the wonderful places that caves are and the need for protecting this natural resource. The association strongly supports this act, and we are delighted and appreciative that this body will take time to seriously consider the act. Thank you, sir.

[The prepared statement of Dr. Huppert follows:]

Testimony of the American Cave Conservation Association on:

THE FEDERAL CAVE RESOURCES PROTECTION ACT: S. 927

Presented before the Senate Subcommittee on Public Lands,
National Parks and Forests

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Mr. Chairman

As the representative and President of the American Cave Conservation Association, I am grateful for this opportunity to express the Association's very strong support for S. 927, the proposed Federal Cave Resources Protection Act. This Act will will help to fill the omission in federal law where cave resources have been generally ignored by agency personnel because such resources are not specifically mentioned in present laws.

Caves are extremely fragile and valuable natural resources. They can be hydrologically significant to the quality of ground water and they are a mirror to the regional subsurface geology. In addition, they may be habitat for unique, often endangered or threatened species. Many spelean species are uncommon or rare and many are listed, proposed, or under review to be proposed as endangered or threatened. S. 927 will enhance existing State and Federal statutes and programs.

Caves are not environmentally isolated from other environments. Events that occur on the surface will effect the caves below. In the approximately twenty percent of the United States where cave bearing formations are common, we are still striving to understand and appreciate the significance of the dynamic hydrogeologic systems by which the surface and caves interact. Because of these complex interactions proper cave protection requires appropriate management of the land and watershed on the surface.

This Act is the result of more than twenty years of effort of numerous individuals and organizations who realized that the fragile nature of many cave resources required sound and effective management if the resource is to be protected and preserved. However, in the past, Federal cave management was dictated as a reaction to an event or perceived hazard and not generally as a response to valid resource protection needs. Many land managers simply ignored caves or overreacted to liability potential. As a result, many of the early cave management plans were simply closure and access regulation systems without more involved concern for the resource itself.

Fortunately, this situation is changing. Most recent cave management plans have been much more resource oriented than in the past.

This growing awareness, while gratifying, is moving much too slowly. Over the past few years the Bureau of Land Management and the Forest Service have developed national policies for cave management. Success has been limited. Without legal mandate most of the agency's policy direction was only suggestive in nature. Subtle wording by using 'may' or 'should' instead of 'must' or 'shall' took most of the effectiveness out of the policies. Unit managers must not be given the choice of ignoring caves for any other resource, for in many cases, that is exactly what will happen, because that is tha easiest choice. More recent drafts of these policies are improved, especially that of the Forest Service. However, these policies do not have the weight of law and can be subverted in many ways by uncaring unit managers.

An important management tool offered by the Act is the exemption from the Freedom of Information Act. This element is critical to the legislation. If this is struck from the Act, users simply will not provide the managers with the necessary information needed to care for the resource. To attempt to collect that same information without the help of cavers would cost the agencies (taxpayers) many thousands of dollars. There is already precedent for this exemption in the Federal Archeological Resources Act. In fact this Act has been used to protect a number of caves, as many caves are significant cultural sites.

The American Cave Conservation Association would like to see some minor changes in the present draft to make the provisions of the Act more workable and give greater protection to caves. First, in section 4(d) under exemptions to the Act, the present thirty day period of notification should be changed to at least sixty days. Also where the notice is to be published should be better clarified to the 'newspaper of record'. Second, the provision for the Act to be largely superceded by existing fish and game laws could gut the intent of the Act. Many of these laws could easily be used to intentionally subvert the Act or perhaps unknowingly harm the spelean environment. This provision should be removed as it is redundant in that exemptions for fish and game laws could and should be covered under the provisions of section 4(d).

As should obvious by now is the great inconsistency among various Federal agencies in their management (or non-management) of caves. The Federal Cave Resources Protection Act is needed to give strict direction to the various agencies on matters of cave management.

In September of 1987 the delegates of the 4th World Wilderness Congress which included some of the most notable names of international conservation passed without objection a resolution for world governments to recognize caves as a critical wild environment by establishing cave wilderness areas. It is now time for the United States to take a similar stand by passing the Federal Cave Resources Protection Act in order to make Federal land managers aware of the value of caves by mandating effective, consistent, and long term management directives for the protection of caves.

I wish to thank you again for the opportunity to enlighten you on the wonderful places that caves are and the need for protecting the fragile resource. The American Cave Conservation Association strongly supports the Federal Cave Resources Protection Act and we are delighted and appreciative that this body will take the time to seriously consider the significance of the spelean environment and its protection.

Senator BUMPERS. Mr. Huppert, I'm not really up to speed on this bill, but let me just ask you. What is the definition of a cave?

Dr. HUPPERT. Well, you could probably ask 100 cavers and get 100 definitions. In most instances caves are any natural enterable void that one can get into for some distance. The discussion comes in how far a distance. One definition would say far enough to get away from natural light, but I can bring you to many examples of caves where you cannot get very far from natural light. But basically a natural enterable void in the earth is considered a cave.

Senator BUMPERS. It's kind of like a conflict of interest: hard to describe. You just know it when you see it? [Laughter.]

Dr. HUPPERT. Yes. To give you an example of difficulty in determining what a cave is, the North Carolina surveyors recently listed 1,000 caves. Being aware of the area in North Carolina, I know for a fact that many of these caves are, in the case of that state, no more than a small void in the ground that I might not personally call a cave. So, there are differences in definitions.

Senator BUMPERS. Have you ever been to Blanchard Caverns in my state?

Dr. HUPPERT. Yes, sir. It's a beautiful cave.

Senator BUMPERS. Remarkable, isn't it?

Dr. HUPPERT. Yes.

Senator BUMPERS. Do you know those caverns were only discovered in 1958, was it?

Dr. HUPPERT. That sounds about correct.

Senator BUMPERS. It was 1956 or 1958, a couple of spelunkers were in there and discovered that. I couldn't believe that they were just getting ready to develop that when I ran for governor in 1970, and then they completed it in 1974. I have been to Carlsbad and Mammoth. And I must say the Blanchard Caverns in Arkansas compare favorably with any of those. I was amazed.

Mr. SCHELTENS. Arkansas, Senator, has some of the country's finest cave resources.

Senator BUMPERS. The Ozarks are just full of caves. The reason I asked you the definition because the Ozarks are full of caves. You know, there are so many of them, that I'm not sure just how many of them would come under the protection. They should all come under the protection of this bill I think. There's no reason not to protect a cave no matter how small.

Mr. SCHELTENS. It's my understanding, Senator, that you and my Senator Daschle got into a discussion concerning who had more caves, Arkansas or South Dakota. And if I understand correctly, Senator Daschle was bragging that South Dakota had more caves. And I just talked with Senator Daschle, and I just suggested that he probably shouldn't bet money on that. [Laughter.]

Mr. SCHELTENS. But if you wanted to say bigger or better, then he'd probably do pretty well. [Laughter.]

Senator BUMPERS. I didn't realize South Dakota was a big cave state until Senator Daschle first talked to me about this bill. Well, he is to be commended, as are the House members, who introduced it over there. I couldn't believe when I first heard about it that we didn't have any cave protection laws on the books already.

The exemption issue worries me a little. I certainly have no quarrel with your suggestion that we give a 60-day notice rather

than 30 days. There's absolutely no reason to grant an exemption unless it ought to be granted, and therefore there is certainly no reason not to extend it to 60 days to make sure everybody has notice on the proposal.

And the other thing I was not quite clear on is the business about the fish and wildlife laws of a particular state gutting the intent of this bill. How would that happen? I don't understand that.

Dr. HUPPERT. I'm not familiar with every state's fish and wildlife laws, but there is certainly a potential for caves being damaged. One example that I might conjure up in my mind is perhaps a small dam on a stream in order to improve some fish habitat in an area adjacent to Federal lands that may impound water into Federal lands could possibly flood caves and destroy the habitat for an endangered species. And yet, under the exemption for fish and wildlife laws here, it would possibly okay to do that. And we would like to see that part struck because those exemptions should come under the normal exemption procedure in 4(d), as John stated.

Senator BUMPERS. Just at first blush—I don't want to commit to this—that makes a lot of sense too.

Gentlemen, since everybody has testified now and I assume that everybody has had their say, and I've got another appointment at 11:30, we will recess the subcommittee subject to the call of the Chair. And we'll thank you and all the witnesses who preceded you for being witnesses this morning.

[Whereupon, at 11:25 a.m., the hearing adjourned.]

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